

2007

Dolores Clayton v. Ford Motor Company : Legal Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

<p>DOLORES CLAYTON, et al.</p> <p style="text-align: center;">Plaintiffs/Appellants,</p> <p style="text-align: center;">vs.</p> <p>FORD MOTOR COMPANY,</p> <p style="text-align: center;">Defendant/Appellee.</p>	<p>APPELLANTS' SUPPLEMENTAL ADDENDUM IN SUPPORT OF COMBINED OVERSIZE REPLY BRIEF AND CROSS-APPELLEES' BRIEF</p> <p>Appellate Case No. 20070517-CA Civil No. 000909522</p>
---	--

Appeal from the Judgment of the Honorable Joseph C. Fratto
Judge of the Third Judicial District Court, Salt Lake County, State of Utah

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Appellants request oral argument and a published opinion.

**FILED
UTAH APPELLATE COURTS
JUL 22 2008**

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Addendum 83

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY
SALT LAKE COUNTY, STATE OF UTAH

-o0o-

DEE CLAYTON, et al.,)	
)	
Plaintiffs,)	Case No. 000909522
)	
vs.)	PLAINTIFF'S MOTION
)	FOR NEW TRIAL
UTAH AUTO COLLECTION,)	
et al.,)	
)	
Defendants.)	

-o0o-

BE IT REMEMBERED that on the 7th day of May, 2007, commencing at the hour of 2:32 p.m., the above-entitled matter came on for hearing before the HONORABLE JOSEPH C. FRATTO, JR., sitting as Judge in the above-named Court for the purpose of this cause, and that the following proceedings were had.

-o0o-

FILED DISTRICT COURT
Third Judicial District

NOV 1 2007

By Bn SALT LAKE COUNTY
Deputy Clerk



Page 1

1 which meant that the door shortened from the front to
2 the rear sufficient to operate a rod that pushed the
3 latch and the latch opened, that if that occurred, he
4 would expect to find the latch in the fully-opened
5 position.

6 He also says in that exhibit that the way to
7 orient the latch is to look at the number of bolt
8 holes. Okay. This particular latch here, 316, it's
9 not exactly the same as ours, the way to orient a
10 latch according to his testimony is that the latch
11 mounts to three holes, and the two-hole side of the
12 latch is the up. So, if you look at his testimony
13 initially on direct examination, he was describing
14 which port bolt was the evidence that supported his
15 theory of the case, that the latch had come open
16 through the weight of Mr. Clayton against the inside
17 of the door.

18 And he identified which port bolt it was
19 that was at issue and it was the lower port bolt. And
20 it's confusing in his testimony, because he first
21 calls it the upper and then he corrects himself at the
22 bottom of Page 52--or I'm sorry, the bottom of Page 53
23 of his testimony. He says, actually, it's the bottom
24 port bolt, but if you turn it around--I misspoke, the
25 top has two screws. So, the orientation becomes very

1 important because it tells us from the photographs
2 which port bolt we're looking at, whether it's the
3 upper or the lower. And under Mr. Caulfield's theory,
4 it's the lower port bolt which damaged the port--the
5 latch pin that's in the door jamb that the--fork bolts
6 latch around.

7 And--and then at Exhibit 2, Mr. Caulfield
8 says, if it's all the way open, that--that means rod
9 activation. So, it became very important then and we
10 didn't know that this was where he was going with that
11 until he was on the stand on direct, long after Mr.
12 Gilbert had gone back to Atlanta, Georgia, that it
13 would be the bottom port bolt that would be at issue.

14 So, if you then turn to Exhibits 3, 4, 5, 6
15 and 7, we see the series of photographs that were
16 taken by Ford's own experts over several years of the
17 door, and every single one of those photographs, which
18 we--which we discussed in Court, showed the fork bolts
19 fully open.

20 Yet Mr. Caulfield continued to protest, no,
21 one of those bolts isn't completely hidden, yours
22 isn't completely hidden and that was important to him
23 to support his theory that it wasn't fully open and
24 completely open. But the one that's not completely
25 hidden is the upper one, which I'll show you in the

1 photographs, not the key one, which he focused on,
2 which was the lower one. Remember, the upper one, it
3 was the side of the latch that has two holes.

4 THE COURT: Mr. Emblem, may I ask this now:
5 You're entitled to a new trial because Mr. Caulfield
6 was confused? I mean, I'm not quite certain what's
7 the--

8 MR. EMBLEM: No. (Inaudible)

9 THE COURT: Okay.

10 MR. EMBLEM: Mr. Caulfield's assistant,
11 whose name is Vosberg, went out on July 21st, 2005,
12 and photographed the latch and he was there two months
13 after Mr. Gilbert. Mr. Gilbert was there and in his
14 report, which is Exhibit 17, he finds the bolts fully
15 open--fully open and he finds that to move--now, what
16 Mr. Gilbert said--I mean, what Mr. Caulfield says in
17 his report is that the bolts were not fully open, that
18 the lower bolt was in a partial closed position and
19 that it (inaudible) in other words, something happened
20 to the latches, they were no longer movable. So,
21 that's not the same as being confused, that's doing
22 something to the latch, which is evidenced in the
23 photographs in Exhibit 8, these are the Vosberg
24 photos.

25 In the Vosberg photos, when he first

1 appeared at the--I don't suppose I--

2 THE COURT: No.

3 MR. EMBLEM: When he first appeared at the--
4 at the yard to photograph the latch, he found the
5 latch in a fully-open position.

6 THE COURT: Now, what are you showing me
7 here?

8 MR. EMBLEM: This is--

9 THE COURT: This is--

10 MR. EMBLEM: You see in the lower right-hand
11 corner, Plaintiffs' 328-D.

12 THE COURT: You'll show that to Mr. Larsen?

13 MR. EMBLEM: Right. It's in Exhibit 8, do
14 you have the--

15 MR. LARSEN: Yes.

16 MR. EMBLEM: It's the first one in Exhibit
17 8. And that would be the same--

18 THE COURT: Yes.

19 MR. EMBLEM: --what we have the same.

20 Also, on that date, we find the fork bolts
21 to be in plane, in other words, they're right next to
22 each other. They're not gapped, there's nothing pried
23 apart. Then we see that in the second picture, which
24 is Plaintiff's 320-K in the still open position.

25 In Plaintiff's 467-47, Mr. Vosberg has now

1 put a steel rod across the opening, the opening that's
2 also known as a fish mouth, but the jaws are still in
3 a fully-opened position. In each of these cases, you
4 can barely see the little tang at the upper latch,
5 because there's two screws on that side of the photo,
6 looking at--into the fish mouth, you don't see the
7 lower one at all.

8 And in Plaintiffs' 467-52, just a little bit
9 change of angle, but the same opening latch, fully
10 open, but for a little ear of the upper.

11 And then also part of Exhibit A to the
12 motion is Plaintiffs' 467-125 and this is the
13 photograph which shows how the sheet metal has been,
14 due to ground contact, has been shifted over slightly,
15 over part of one side of the fish mouth. You can't
16 see the whole fish mouth. The fish mouth has a ridge
17 all the way around it, you can't see the whole fish
18 mouth because part of the sheet metal is pushed over
19 that part of the--of the opening, contacted the
20 ground, which is the same testimony that both Mr.
21 Gilbert gave and--and the report of--of Tom Teague,
22 which was included in evidence. The Court's first
23 expert that dealt with the issue of--of the door
24 latch.

25 Now, if you turn to Plaintiffs' Exhibit 18

1 the tong, whatever they call it on the upper latch
2 that's still visible, you can see the reason it's
3 visible is, the sheet metal, after contact with the
4 ground, has been bent down and towards the opening.
5 That's actually the skin of the door that's holding
6 that little tong towards the opening.

7 And the rest of the photos in the exhibit
8 depict the latch in its fully-opened position and a
9 very good close-up of why the one little here tong or
10 tang, various--called different things during the
11 course of the record--

12 THE COURT: Mr. Emblem--

13 MR. EMBLEM: --is still in the open--

14 THE COURT: --actually, your ten minutes are
15 up, but I--I--and I have read the paper and the
16 memoranda on this, but I wonder if you could--I'm not
17 quite sure what you're suggesting here and that is,
18 that the--the latch had been tampered with.

19
20 MR. EMBLEM: Yeah, I think that's true.

21 THE COURT: And the--

22 MR. EMBLEM: I think that's true, your
23 Honor--

24 THE COURT: --latch was tampered with
25 between the time Mr. Gilbert saw it--you tell me,

1 in this motion, these are the photographs taken by Tom
2 Teague, which were also excluded. And I think it's
3 important to discuss these because under Killpack vs.
4 Wigdahl, this court, your Honor, it's certainly within
5 the power and if--if the interests of justice require
6 to do what's necessary to mean justice and that would
7 include judgment notwithstanding the verdict or in the
8 alternative, a new trial.

9 But Exhibit No. 18, Mr. Teague's
10 photographs, I don't know if the Court has its copy
11 there.

12 THE COURT: I have.

13 MR. EMBLEM: If I may approach again, that
14 (inaudible) talk about that.

15 THE COURT: Well, I have a copy.

16 MR. EMBLEM: Okay. Unless you have a color
17 copy. Well, I can show the Court the color copy, I
18 think it might be easier to see.

19 THE COURT: Okay.

20 MR. EMBLEM: This is Mr. Teague's photos and
21 we've selected photos from his roll, No. 69 through
22 76, and his roll, Photo No. 69, we can see how the
23 sheet metal has been shifted over the top of the fish
24 mouth; but more importantly, in that photo and in the
25 next, which is his No. 70, we see that the one tang of

1 what--

2 MR. EMBLEM: Well, it--it appears--

3 THE COURT: What do you think we have here?

4 MR. EMBLEM: --that Mr. Caulfield says the
5 photographs speak for themselves, but we don't start
6 seeing the new appearance until Mr. Vosberg tested it.
7 They were Packer Engineering, and during the time that
8 Packer Engineering had their--had our door latch in
9 Chicago, they made this exhibit, it's evident they
10 made it then because that's when they had possession
11 of the latch. And in this exhibit, which is
12 Defendants' 956-A, the subject latch is depicted with
13 that lower here into the opening and they did that,
14 it's just like their transverse test latch with the
15 lower gear into the opening.

16 And now, the plaintiffs' latch bolts are
17 immovable, you can't move them, they're immovable. So,
18 how--so, how did that happen? It had to happen on
19 their watch. I think that's the logical conclusion.

20 There was that thing and then there was the
21 fact that the (inaudible) we didn't see this
22 separation between the ports until Mr. Vosberg started
23 messing with that latch. Now, I'm not too sure that
24 that is the giant thing about that, but the fact that
25 the way this thing is bent--the way this thing is bent

1 is evident in the Exhibit No. 23, the inner skin.
 2 Remember, the outer skin is protected by what they
 3 call the intrusion bar, so when you push the door
 4 front to back, the outside skin doesn't move much; but
 5 the inside of the door moves quite a distance, and in
 6 this case has, between the door latch, where the door
 7 latch was located--the handle, rather, here, and where
 8 the latch was attached here. And the wrinkling in the
 9 sheet metal depicts exactly the fact that the inside
 10 of the door panel moved, the handle moved toward the
 11 latch, the metal was wrinkled, it only had to move a
 12 half an inch or five-eighths to make that happen.

13 THE COURT: Well, let me ask, and as I say,
 14 the time has expired in terms of what you wanted to
 15 reserve, but I--what is the standard now in your
 16 alternative motions that need to be applied to which
 17 you see as--as a latch that had been modified between
 18 the time of the collision and--or the--the collision
 19 and the--the time of trial?

20 MR. EMBLEM: Specifically when in the
 21 position of Packer Engineering--

22 THE COURT: That--that's your claim, is that
 23 the--

24 MR. EMBLEM: Right.

25 THE COURT: --latch was modified between the

1 time of--of the collision and the time of trial and--
 2 but what does--in terms of the motions now you raise,
 3 what's the standard that I need to apply?

4 MR. EMBLEM: In the interests of justice.

5 THE COURT: I mean, if I were to make that
 6 finding? If I were to make that finding that--or make
 7 that determination, that they were--there was a
 8 modification here, what's the standard I need to apply
 9 for that?

10 MR. EMBLEM: Well, I think that if the Court
 11 makes that finding, and I think it would be an
 12 appropriate finding to make, that the Court has the
 13 power, in the interests of justice under Killpack and
 14 also this case, the one that's Weeks vs. Latter-Day-
 15 Saints Hospital, and it's based on insufficiency of
 16 evidence and false evidence.

17 It's very subtle, Judge. I--I understand
 18 how--I knew the case probably as well as Mr. Larsen
 19 and probably better than all the experts, but it was
 20 very subtle, the way this was choreographed. I'm sure
 21 that Mr. Caulfield, whether it was him or someone in
 22 his organization, but the plan was set out to move
 23 this latch into the position to fit their theory and
 24 then stuck in that position now.

25 And that's it. We wouldn't do that, why

1 would--why would plaintiffs monkey with the latch?
 2 You know, I saw the opposition to the motion, they
 3 say, well, they forgot to--we forgot that they mailed
 4 the other latch down to our expert, who kept it until
 5 he came to trial. He never examined it. He came to
 6 trial and it looked about right, we didn't have any
 7 reasons to suspect at that time, Mr. Gilbert didn't,
 8 and I didn't, and I don't think any--I don't think Mr.
 9 Larsen did, that this was happening; but I believe it
 10 happened and I think that--I think the Court can
 11 believe it happened.

12 THE COURT: Okay.

13 Mr. Larsen?

14 MR. LARSEN: It's the plaintiffs' motion for
 15 a new trial and a motion for judgment notwithstanding
 16 the verdict, and I will just make it clear right here,
 17 there was no fraud, there was no tampering, there was
 18 no manipulation of the evidence. We had a robust
 19 trial for six weeks and I'll go through the evidence.

20 The standard to be applied by the Court is
 21 whether or not the evidence at trial was insufficient
 22 to support the verdict, but this motion is being
 23 raised in an unusual context. It's usually raised in
 24 a context where there was a verdict for the plaintiff
 25 and the defense are claiming there was insufficient

1 verdict--insufficient evidence to support the verdict
 2 presented by the plaintiff.

3 Here, the plaintiff had the burden at trial.
 4 The defense had no burden. And the verdict--the jury
 5 found the plaintiffs did not meet their burden, so
 6 really, we have--the plaintiffs really have the role
 7 switched here on insufficiency of the evidence.

8 So, what I'd like to do is, I'll walk
 9 through the evidence that we had and the standard for
 10 the Court to apply is whether or not there's
 11 sufficient evidence to, as I said, to support the
 12 verdict.

13 And before I get to that, their motion for a
 14 new trial standard, the J.N.O.V. standard is basically
 15 the same, if there's insufficient evidence to support
 16 the verdict at the end of the case in chief, then the
 17 party that is going to move for J.N.O.V. must make a
 18 motion for a directed verdict. The plaintiffs failed
 19 to make a motion for a directed verdict on the
 20 insufficiency of the evidence. They did make a motion
 21 for a directed verdict at the end of the defense case,
 22 on the basis that they were trying to strike our
 23 affirmative defenses, statute of limitations and
 24 comparative fault; but nothing otherwise. So, the
 25 J.N.O.V. should be denied procedurally.

Addendum 84

ADDITIONAL EXCERPTS APPLICABLE CITED RULES

Utah R. App. P. 11 (h) - states in part: Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted.

Utah R. App. P. 33 (b) - states: For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

Utah R. Civ. P. 11 - states in part: Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances...

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Utah R. Civ. P. 49 (a) - states in part: If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue... unless before the jury retires the party demands its submission to the jury.

Utah R. Civ. P. 59 (a)(6) - Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Evid. R. 103 (a)(2) - (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and...In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

Evid. R. 103 (d) provides: Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Utah R. Evid. 611 - states in part: The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth....(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

Addendum 85

FILED DISTRICT COURT
Third Judicial District

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**IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

DEE CLAYTON, et al.,
Plaintiffs,

v.

UTAH AUTO COLLECTION, et al.,
Defendants.

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' RULE 26(a)(4)
PRETRIAL DISCLOSURES**

Case No. 000909522
Judge Joseph C. Fratto

PLAINTIFFS object to Defendants' Exhibits as follows:

No.	Defendants' Trial Exhibit Description	Plaintiffs' Objections
1	Curriculum Vitae of Donald Tandy	Evid. R. 403, 601(c)(2), 801(c), 802
2	Casebook	Reserve objection
3	Chart (A) – Track Width for Selected Vehicles (Bar) Chart (B) –Track Width for Selected Vehicles (Range)	Evid. R. 401, 402, 403, 702

454	All Germane Engineering vehicle inspection photographs	
455	Scaled vehicle models	
456	Letter from Snell & Wilmer to Zelita Biesele re Clayton 3/21/03 (Germane Depo Ex 9)	Withdrawn
457	Light vehicle Rollover frequency 1995-2001 (Germane Depo Ex 11)	Evid. R. 401, 402, 403, 702
458	Rollover Frequency NASS CS 1995-2001 weighted data Occupants in Light Vehicles	Evid. R. 401, 402, 403, 702
459	Minor Serious and Fatal Injuries in Rollover by number of Rolls (quarter turns) - Light Vehicles NASS CDS 1995-2001, weighted data (Germane Depo Ex 13)	Evid. R. 401, 402, 403, 702
460	Edward M. Caulfield, Ph.D., P.E. Curriculum Vitae	Evid. R. 401, 402, 403, 702
461	Packer Engineering photographs of subject vehicle and exemplar vehicle components	Withdrawn
462	Excerpts from FMVSS 206 Standard and SAE J839	
463	Exemplar Vehicle Components used in demonstrations	
464	Exemplar Door latch	
465	Data, photographs and/or video from various demonstrations of exemplar vehicle components	Withdrawn
466	KGV Notes re Door Foreshortening Study 1/26/05	Evid. R. 401, 402, 403
467	KGV Photos and Inspection Notes 7/21/05; Roll No. 7075I, 7076I, 7077I, 7078I	
468	Exemplar Vehicle Inspection 1998 Ford Explorer; 9/12/2005; Roll No. 7777I	
469	FMVSS 206 Transverse Load Test; 9/14/2005; Roll No. 7851I	
470	EMC Inspection Photos 1/16/06; Roll Nos. 9339I, 9340I	
471	MWR Photos/Video of 1997 Ford Explorer Lateral Pull Demo (Left Front Striker #24574) 1/19/06 (Roll No. 9359I, DVD 004)	
472	Left Front Longitudinal Door Push Demo – 1997 Ford Explorer; Inside Handle Rod Actuation Travel Demo – 1997 Ford Explorer; Photos and Video 04/04 -05/06 (Roll Nos. 0164J, 0165J, DVD 016)	
473	Left Side Striker Post Displacement	
474	Left Front Longitudinal Door Push Demo 1997 Ford Explorer; 4/11/2006; Photos Roll No. 0429J	
475	Left Front Longitudinal Door Push Demo 1997 Ford Explorer; Photos and Video 5/2/2006; Roll No 0426J, DVD 018	
476	Exemplar Door Photographs 10/25/2006 (Rolls 2177J1-14)	
477	KGV Photos re Subject Latch Removal 10/27/06 Roll No. 2262J	

Addendum 86

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
 UTAH AUTO COLLECTION,)
 et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF ROSS PACE

REPORTED BY: Catherine L. Kennedy, RPR, CSR

By Bm SALT LAKE COUNTY



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Page 46

1 A I did not.
2 Q Okay. Did that appear to be significant
3 at all in investigating this accident?
4 A It did not at the time, no, sir.
5 Q And why not?
6 A Because back on the road, before you
7 could see where it was -- where it come off the
8 highway, all four tire marks, you could see -- at
9 least all three you could see really well. Going
10 back to recollection, I think that I could possibly
11 see a little bit of the fourth one also, but it
12 didn't show up in the photographs. So there was
13 nothing showing that there was anything broken on the
14 vehicle before it left the highway.
15 Q I show you an enlargement of one of
16 these photographs, which is marked as Plaintiffs'
17 Exhibit 23-17, and ask if you can take a look at that
18 photograph and if you can identify a fourth mark in
19 that photograph.
20 A It appears to me that it's right there.
21 I haven't seen this blown-up photograph before.
22 Q You mean that quality of a photograph?
23 A That quality of a photograph.
24 Q That's the same photograph we saw
25 before, but it's just a little bit clearer?

Page 47

1 A It is.
2 Q Okay. And is the location of that tire
3 mark consistent with coming from this accident?
4 A That's correct.
5 Q And moving on to Exhibit No. 14, did you
6 inspect the driver's area of the vehicle?
7 A Sorry.
8 I did.
9 Q And why did you take this photograph?
10 A Basically, for the seat belt and the
11 seat being intact, if I remember correctly.
12 Q Did there appear to be any damage to the
13 center console?
14 A There did not, no, sir.
15 Q Did there appear to be anything between
16 the center console and the seat belt latch?
17 A There did not, no, sir.
18 Q And did you draw any conclusions as to
19 whether or not the driver was restrained or
20 unrestrained based on the photograph and your own
21 investigation?
22 A I did.
23 Q And what was your conclusion?
24 A My conclusion is he was not wearing his
25 seat belt.

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1 Q And how did you make that conclusion?
2 A The seat belt appeared to be working
3 properly, and he had been thrown out of the vehicle.
4 Q And do you know if the occupant on the
5 passenger side was wearing a seat belt?
6 A To my recollection, she was still
7 seat-belted in the vehicle when the emergency
8 personnel arrived.
9 Q Okay. And is whether or not the
10 occupants are belted or not something that's
11 indicated in your investigation report?
12 A It is.
13 Q And what did your investigation report
14 indicate regarding the driver seat belt?
15 A In my report, it shows that was not
16 wearing a seat belt.
17 Q And where does that -- where is that
18 indicated on the report?
19 A It is about in the middle of the page.
20 It shows the driver is -- driver's license number,
21 his date of birth. And then again it has codes --
22 little box codes that you get off of this. It
23 says --
24 THE COURT: Which exhibit is that
25 referring to?

Page 49

1 THE WITNESS: 22.
2 THE COURT: 22?
3 THE WITNESS: The little box says
4 "Safety equipment." And if you go back to the key,
5 safety equipment No. 3 says there was none worn.
6 It's right there.
7 MR. LARSEN: Can you blow that up?
8 THE WITNESS: Right there.
9 Q (BY MR. LARSEN) Okay. And it says "Safe
10 equip"? Is that what it says for that box?
11 A I think that's what it says.
12 Q And is that your writing that says "no"
13 or is that somebody else's?
14 A It is not my writing, no, sir.
15 Q And you just typed in the number "3"?
16 A I did or the secretary did.
17 Q And then down with the passenger, let's
18 take a look and see. Is there a similar box for
19 that?
20 A There is.
21 Q And is that down --
22 A It's right --
23 Q -- on the bottom page?
24 A -- there.
25 Q And what does the number "2" indicate?

1 A The number "2," according to the key,
2 means yes.

3 Q Meaning yes, that restrained?

4 A That was restrained.

5 Q Okay. On this photograph or -- excuse
6 me -- on your report, are there certain boxes on the
7 left-hand side of the report that indicate conditions
8 at the scene of the accident?

9 A I believe that's on the left-hand side,
10 these key boxes here.

11 Q And can you use that code key and kind
12 of walk us through what those -- what those
13 indicators are that you recorded in your accident
14 report and what they mean?

15 A I could if I could see it.

16 Q Do you need more light?

17 A This low light, I'm having a hard time
18 seeing.

19 That's better.

20 Q That kind of fades it out for us to see
21 it as well.

22 THE COURT: You should refer to the
23 exhibit, yes.

24 Q (BY MR. LARSEN) And on the left-hand
25 side, does that indicate what that -- the weather

1 conditions, the road conditions were at the time?

2 A It does.

3 Q And what does your report indicate?

4 A It would be right in there, and it says
5 a "1" and No. 1 is clear.

6 Q Okay. And that's consistent with the
7 photographs that were taken on that day?

8 A That's correct.

9 Q And then on the right side of this
10 report, are there codes that indicate what the causes
11 of the accident are in your --

12 A Yes, there is.

13 Q And can you identify which box indicates
14 what the cause of the accident is?

15 A I think No. 19, right there, is the
16 prime contributor.

17 Q And that little box, then, on the
18 right-hand side has "19" up in the little right-hand
19 corner?

20 A Right there is the 19.

21 Q Okay. And --

22 A And the cause -- I have put down as the
23 cause -- according to this key, I put down No. 12.

24 Q And what does that indicate?

25 A Which is asleep.

1 Q And so what does that mean when you say
2 it's a prime contributor?

3 A That's what was the most likely cause of
4 the accident.

5 Q And why did you choose "asleep"?

6 A Because that's what my investigation and
7 what I went through showed me, that it was either
8 inattentive driving or asleep.

9 Q And were there any other contributors
10 that you listed on your accident report?

11 A Secondary contributor would be under
12 No. 21 right there. I put down "01."

13 Q What does that mean?

14 A Which is speed too fast.

15 Q And why did you indicate "speed too
16 fast"?

17 A Because I felt that, when you are
18 asleep, any type of speed is too fast.

19 Q And, Trooper Pace, did you get any
20 information from the occupant, Ms. Montoya, as to
21 whether or not she was wearing her seat belt?

22 A I don't recall actually getting any
23 information, no, sir.

24 Q And did you get any information from her
25 about whether or not she was awake or asleep during

1 the accident?

2 A As far as memory, no, sir, I don't.

3 Q It's been too long?

4 A It's been too long ago.

5 Q Do you know if you talked to her?

6 A I don't know that I talked to her, no,
7 sir.

8 Q And do you seem to have a recollection
9 of going to the hospital in Evanston?

10 A I do.

11 Q And what did you do at the hospital?

12 A Again, going back strictly memory, I can
13 remember talking to the doctor and I think I remember
14 talking to the passenger also.

15 Q And do you know what information you got
16 from the doctor or passenger?

17 A Talking to the doctor, I remember him
18 telling me it was a fatality.

19 Talking to the passenger, I -- again,
20 it's just sheer memory, and it could be another
21 person, but I remember asking her if she remembers
22 anything about the --

23 MR. EMBLEM: No foundation, your Honor.

24 THE COURT: Sustained.

25 MR. LARSEN: No. It's sustained.

Addendum 87

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
Plaintiffs,)
)
vs.)
) Judge Joseph C. Fratto
UTAH AUTO COLLECTION,)
et al.,)
)
Defendants.)

TRANSCRIPT OF TRIAL PROCEEDINGS

DATE: January 5, 2007

TIME: 9:13 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

<p style="text-align: right;">Page 50</p> <p>1 little bit of time. It's a long green mile down 2 the... 3 (Mr. Andersen entered the courtroom.) 4 THE COURT: Please be seated. Mr. Andersen 5 has joined us again. 6 Mr. Andersen, in considering the situation 7 it's been resolved that, with our thanks and 8 appreciation, we're going to excuse you from further 9 jury service. Again, appreciate you engaging in this 10 process and being part of it. And thank you very 11 much. 12 MR. ANDERSEN: I apologize again for this 13 morning. I didn't mean to disrupt your proceedings. 14 THE COURT: We wish you well, Mr. Andersen. 15 (Mr. Andersen left the courtroom.) 16 THE COURT: And unless there's something with 17 this opportunity you'd like to discuss, we'll be in 18 recess until Tuesday next at 9:00. 19 MR. O'NEILL: Your Honor, I guess I just 20 wanted to raise some of the other issues that we had 21 covered but really not resolved. And that is what 22 this means in terms of proceeding and being able to 23 finish, in light of not only this but the two other 24 issues that were expressed to us this morning. 25 And I don't know that we've made any</p>	<p style="text-align: right;">Page 52</p> <p>1 approach it that way. 2 MR. O'NEILL: Very good, your Honor. 3 THE COURT: See you at 9:00 in the morning 4 Tuesday, the 9th of January. 5 (The court was recessed at 4:46 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 51</p> <p>1 progress. Doesn't sound like the plaintiff really is 2 bothered about it. But, you know, the fact remains 3 that we've got an unhappy jury. We've got one less 4 alternate. 5 We haven't even gotten through openings, and 6 we are about to embark on major expense on both sides. 7 That troubles me. And I've reported to my client, and 8 I've been fully authorized to request a full redo of 9 the jury so that we guarantee that when we start we 10 will finish. 11 THE COURT: Well, I, I'm not certain 12 whether -- and I suppose the question is whether -- 13 there's some discretion on my part in terms of 14 granting a request to declare a mistrial. I suppose 15 it's a motion for a mistrial? 16 MR. O'NEILL: It will be, yes, your Honor. 17 THE COURT: Well, and I suppose if we're 18 going to approach it that way as a formal motion for 19 mistrial that maybe we should anticipate doing that 20 Tuesday at 9:00. And give everyone an opportunity to 21 consider that. 22 I don't know that we will have a formal 23 written motion, but I, I think that can be orally 24 made. And we can discuss that on Tuesday as the first 25 order of business. A motion for a mistrial. Let's</p>	<p style="text-align: right;">Page 53</p> <p>1 CERTIFICATE 2 3 STATE OF UTAH) 4) ss. 5 COUNTY OF SALT LAKE) 6 7 This is to certify that the foregoing proceedings 8 were taken before me, KELLY L. WILBURN, a Registered 9 Professional Reporter and Notary Public in and for the 10 State of Utah. 11 12 That the proceedings were reported by me in 13 stenotype and thereafter caused by me to be 14 transcribed into typewriting. And that a full, true, 15 and correct transcription of said proceedings so taken 16 and transcribed is set forth in the foregoing pages, 17 numbered 1 through 52, inclusive. 18 I further certify that I am not of kin or 19 otherwise associated with any of the parties to said 20 cause of action, and that I am not interested in the 21 event thereof. 22 23 WITNESS MY HAND AND OFFICIAL SEAL AT KEARNS, UTAH 24 THIS 7th DAY OF October, 2007. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 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1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757 1758 1759 1760 1761 1762 1763 1764 1765 1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778 1779 1780 1781 1782 1783 1784 1785 1786 1787 1788 1789 1790 1791 1792 1793 1794 1795 1796 1797 1798 1799 1800 1801 1802 1803 1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041</p>

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

ESTATE OF ANTHONY CLAYTON	Et	
al,		: MINUTES
Plaintiff,		: JURY TRIAL DAY 5
		:
		:
vs.		: Case No: 000909522 WD
		:
JOHN DOES 1 THROUGH X	Et al,	: Judge: JOSEPH C. FRATTO
Defendant.		: Date: January 9, 2007

Clerk: wendyd
Reporter: CATHI KENNEDY

PRESENT

Plaintiff's Attorney(s): THOR O EMBLEM
TRACY L EMBLEM
MATTHEW H RATY
Defendant's Attorney(s): DAN R LARSEN
KIMBERLY NEVILLE
TIM O'NEILL

CAT/CIC
Tape Number: crtroom N41

TRIAL

TAPE: crtroom N41 The official record is taken by Depomax.
Court Reporter Cathi Kennedy for the morning session.
→ Defendant's motion for mis-trial is denied.
Exclusionary rule is invoked.
9:19 Members of the jury are now present.
Plaintiff's opening statement.
10:42 Defendant's second motion for mis-trial is denied.
11:40 Plaintiff's opening statement is finished.
Jurors are released for the noon recess and are to return at 2:00
p.m.
Change in court reporter to Wendy Alcock.
2:28 Defendant's opening statements.
3:59 Plaintiff's witness FRED CLAYTON is sworn and testifies.

Addendum 88

<div style="display: flex; justify-content: space-between;"> 11 - 27 - 98 STATE OF INVESTIGATING OFFICER'S REPORT OF TRAFFIC ACCIDENT FATAL </div>		<div style="display: flex; justify-content: space-around;"> 1 2 3 4 5 6 7 M T W T F S S </div>		<div style="display: flex; justify-content: space-around;"> MILITARY TIME 1410 </div>		<div style="display: flex; justify-content: space-around;"> CASE NUMBER 079809281 </div>		<div style="display: flex; justify-content: space-around;"> Page 1 of 1 </div>	
		<div style="display: flex; justify-content: space-around;"> DATE OF WEEK 11 - 27 - 98 </div>		<div style="display: flex; justify-content: space-around;"> DATE OF WEEK 11 - 27 - 98 </div>		<div style="display: flex; justify-content: space-around;"> DATE OF WEEK 11 - 27 - 98 </div>		<div style="display: flex; justify-content: space-around;"> DATE OF WEEK 11 - 27 - 98 </div>	
<div style="display: flex; justify-content: space-between;"> PLACE WHERE ACCIDENT OCCURRED: COUNTY Summit 43 CITY OR TOWN </div>		<div style="display: flex; justify-content: space-between;"> Accident was outside city limits 4 MILES NORTH S E W of Evanston, Wyoming </div>		<div style="display: flex; justify-content: space-between;"> ROAD ON WHICH ACCIDENT OCCURRED: I-80 RAMP NO. </div>		<div style="display: flex; justify-content: space-between;"> GIVE NAME OF STREET OR HIGHWAY NUMBER INTERSECTION TYPE </div>		<div style="display: flex; justify-content: space-between;"> 1. AT ITS INTERSECTION WITH </div>	
<div style="display: flex; justify-content: space-between;"> 10. PEDESTRIAN 2. BICYCLIST </div>		<div style="display: flex; justify-content: space-between;"> DATE OF BIRTH AGE </div>		<div style="display: flex; justify-content: space-between;"> SEX INJURY </div>		<div style="display: flex; justify-content: space-between;"> TYPE CAUSE </div>			
								<div style="display: flex; justify-content: space-between;"> AREA </div>	

PLAINTIFF'S
 EXHIBIT
 22

EXHIBIT
 Page
 2

IF YOU WANT WHAT HAPPENED BELOW.

CA NUMBER 079809281

INDICATE DIRECTION OF NORTH

VEHICLE NO. 1 NO.

Reason For No Diagram

Officer not at scene

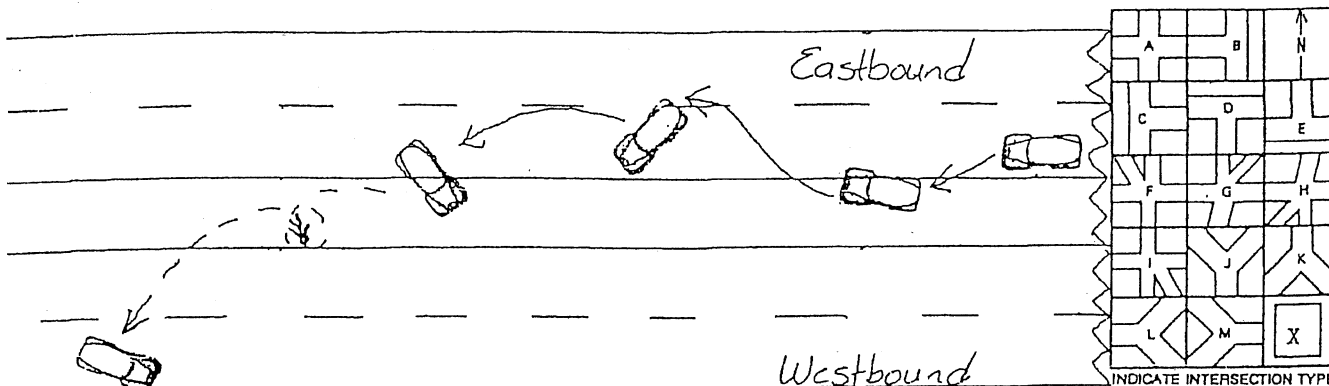
Vehicles moved

Other



ESTIMATED TRAVEL SPEED	75
ESTIMATED IMPACT SPEED	70
POSTED SPEED	75
ADVISORY SPEED	--

I 80



WRITE WHAT HAPPENED (Refer to Vehicle by Number)

Vehicle was eastbound on I-80. The vehicle drifted off the road to the left. The driver swerved to the right and back onto I-80 eastbound. He then swerved back to the left and off the road. The vehicle rolled thru the median, and ended up in the slow lane of I-80 westbound.

If Hazardous Materials were involved list the placard number from off the commercial vehicle:

PROPERTY DAMAGE TO PROPERTY OTHER THAN VEHICLES

None

Name object and state nature and amount of damage

ESTIMATE

Address of object struck

ISSUES

None

Address

Phone

Address

Phone

FIRST AID ADMINISTERED BY

EMS REPORT NO.

U

INJURED TAKEN BY

- 1- Ambulance, Private
- 2- Ambulance, Fire
- 3- Paramedics
- 4- Private Vehicle
- 5- Helicopter
- 6- Other

TIME: Amb. Called: 1415 Arrived: 1425

- 1 - Private Individual
- 2 - Hospital
- 3 - Helicopter Personnel
- 4 - None Administered
- 5 - Unknown

EMS REPORT NO.

INJURED TAKEN TO Evanston Regional Hospital

ACTIVITY

11 - 27 - 98
Month Day Year

Date Notified of Accident

1415

Time Notified of Accident

1450

Arrived at Scene

Investigation of accident Completed at

1100

the same day the 1st day following

Source of Information

Officer at scene Yes

Driver No. Contacted station

Other

2 Photos
PHOTO(S) TAKEN
YES ☒ NO ☐
VIDEO TAKEN
YES ☐ NO ☒
FIELD DIAGRAM
YES ☒ NO ☐

None

Charge:

Charge:

Inspection Yes No ☒ If Yes, Report Number

Station taken None

For Ross Pace 125 7A UHP 4P 11-28-98

OFFICER'S RANK AND NAME I.D. NO. PATROL DIVISION DEPARTMENT SUPERVISORS APPROVAL DATE OF REPORT

State Law requires that report be forwarded to Dept. of Public Safety within 10 days following completion of the investigation. Mail ORIGINAL OF REPORT TO: Driver License Division Financial Responsibility Section 4501 South 2700 West • P.O. Box 30560 • Salt Lake City, Utah 84130-0560

ACCIDENT FIELD SKETCH FORM

Accident Date 11-27-98 Time Day of week Friday

Vehicle SE80 mp 196


Road type Concrete Condition Dry

Wheel skids Drag factor

Investigator Ross Pacc

Accompanied by Jeff Peterson & Paul Brown

Date 11-27-98 Time 1512

Location Median Storm Drain access ^{substation} South Edge 

#1 MAKE Ford LIC S38 KAZ COLOR Brown

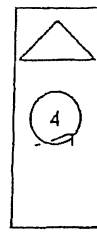
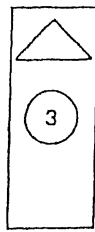
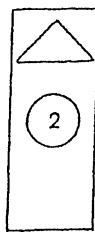
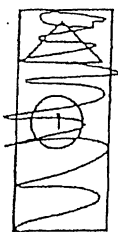
#2 MAKE LIC COLOR

#3 MAKE LIC COLOR

#4 MAKE LIC COLOR

Give measurements (shade in)

LOCATION & DIRECTION OF DAMAGE



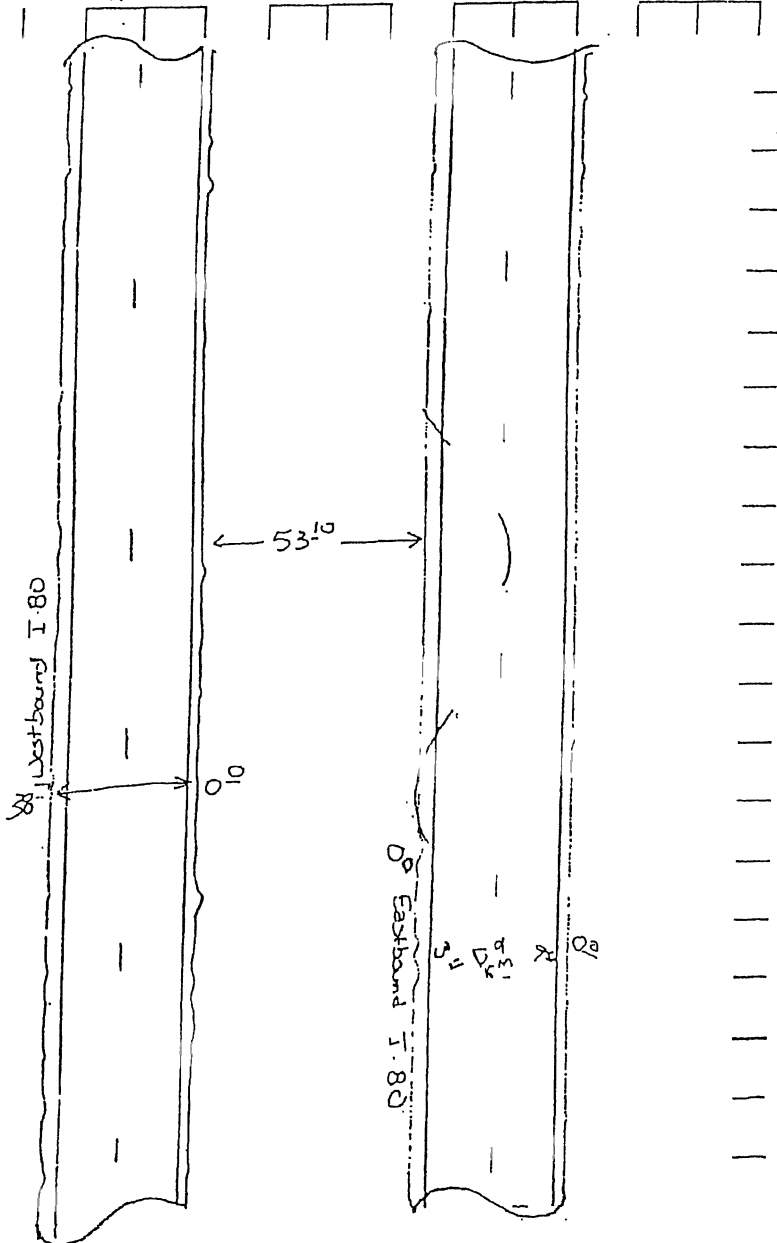
WT.

WT.

WT.

WT.

WHEEL LOCATION		RP	EDGE	
Wheel leaves ft shoulder	A	84 ¹¹ ₁₀	38 ⁵ _N	
Wheel reenters	B	31 ⁵ _E	38 ⁵ _S	
Start of skid operation	C	175 ¹¹ _E	13 ⁰ _—	
Wheel leaves shoulder	D	205 ³ _E	38 ⁵ _S	
Front skid	E	252 ¹ _—	9 ⁰ _—	North Fog
ft rear skid	F	310 ⁶ _—	32 ⁵ _S	
ft rear skid	G	321 ¹ _—	38 ⁵ _S	
Wheel starts in median	H	327 ⁵ _S	48 ⁵ _S	
1st Rest mark	I	377 ¹⁰ _—	40 ⁰ _—	from N. Edge of East I-80
Wheel enters I-80	J	417 ² _—	0 ⁰ _—	South edge of W. I-80
Left Axle	K	473 ¹ _—	27 ⁸ _—	
Right Axle	L	475 ² _—	35 ¹ _—	
Left Rest	M	480 ⁷ _—	24 ⁴ _—	
Right Rest	N	485 ⁵ _—	29 ⁸ _—	
	O			
	P			
	Q			
	R			



Additional information on reverse side

Addendum 89

Page 30

1 here.

2 Q If I said West Jordan, would that help refresh

3 your recollection?

4 A It sounds like it, yes.

5 Q And then what did you do? You bought the car

6 back and then what did do you?

7 A I made arrangements with Jack Bingham to store

8 it for us. And then I started trying to figure out what

9 happened. And I'm not a mechanical engineer. I had a lot

10 of training as a flight engineer with a lot of mechanics

11 in it, but I don't have any formal degree, so I thought I

12 needed to find some experts. And so we found some

13 experts.

14 Q At some point after you bought the car back and

15 before the second anniversary of Tony's death you filed

16 suit?

17 A I did what?

18 Q You filed suit?

19 A Yeah. I took my time. And I didn't -- you

20 know, taking on a big company like Ford Motor Company is a

21 major undertaking, and I wanted to be right. I wanted to

22 know what went on and be right in my mind if it was a

23 mechanical defect that I was going to stand behind my

24 convictions and go after that. And then during the time

25 that ensued, I started seeing some articles. And my

Page 31

1 daughter called me up --

2 MR. LARSEN: Objection, relevance, narrative.

3 THE COURT: Sustained.

4 Q (BY MR. EMBLEM) Let me just ask questions

5 rather than narrate. So now we're in the following year.

6 A Yes.

7 Q In the year 2000?

8 A Yes.

9 Q And you started mentioning that your daughter

10 mentioned that she had heard something or seen something,

11 without saying what it is?

12 A Yes.

13 Q And did that cause you to have some -- to alert

14 you that maybe Ford may have some liability?

15 A Yes.

16 Q Was that in the fall of 2000?

17 A The final things that I understood happened in

18 late September of 2000, that's what made me make the

19 decision.

20 Q Let me ask you about a few of the photographs

21 that you've seen.

22 MR. EMBLEM: I want first to have a stipulation

23 that we move for all of the highway patrol photographs.

24 MR. LARSEN: No objection.

25 MR. EMBLEM: Which are Exhibit 23-1 through 26.

Page 32

1 THE COURT: 23-1 through Exhibit 26? No

2 objection?

3 MR. LARSEN: No objection.

4 THE COURT: Those exhibits, 23-1 through and

5 including 26, received.

6 Q (BY MR. EMBLEM) Now, you mentioned that --

7 THE COURT: Pardon me just one moment.

8 (Briefly off the record.)

9 THE COURT: Mr. Clayton, please step down.

10 Watch your step on the way down. We have some emergency

11 that needs to be attended to, so -- well, it's almost time

12 anyway if we break at 5:00. So we'll do that and pick up

13 the struggle. At 9:00 tomorrow morning we'll resume

14 again.

15 Do not express any opinions among yourselves or

16 with others. Don't do any investigation or analysis of

17 any type, nature, or description. And if anyone asks you

18 what you're doing, other than tell them you're on the jury

19 and can't talk about it, that should be the extent of the

20 conversation. If anyone attempts to talk to you about

21 these matters, you should report that to me at your first

22 opportunity. With that, you are excused. 9:00 tomorrow

23 morning.

24 (Jury excused.)

25 THE COURT: And unless there's something we need

Page 33

1 to take up, we'll be in recess until 9:00 tomorrow

2 morning.

3 (The hearing was adjourned at 4:53 p.m.)

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25 ***

1 about this?

2 A Yes.

3 Q And according to your letter, Kellie was seeking
4 to obtain money for her medical expenses and any other
5 future care that she would need; is that right?

6 A Yes. I want to correct one thing. You're
7 saying "my letter." This is my helping her. This is her
8 letter, and she fully understood that.

9 Q Okay. And you felt that she was competent to be
10 able to understand that at the time?

11 A Yes, I felt that.

12 Q And you felt that she was competent to be able
13 to resolve her claims without the assistance of an
14 attorney?

15 A Yes.

16 Q If you'd turn to page 2, Kellie signed this
17 letter; is that right?

18 A She did.

19 Q And it's even notarized?

20 A That's correct.

21 Q Do you know why it was notarized?

22 A Because I told her it would be a good idea to do
23 that.

24 Q Did you help her mail it to the insurance
25 company?

1 A No, I sent it to her and she did that.

2 Q And if you can read the paragraph starting out
3 with, "My total bills." Part of it has been redacted or
4 blacked out.

5 A Yeah, they were big. "My total bills are
6 around" -- "I do not know how much you have already paid;
7 however, I will accept the settlement of" -- whatever --
8 "and will pay the balance of the bills from that. The
9 remainder will be to cover my long-term problems, pain and
10 suffering."

11 Q Was that your language or was that her language?

12 A It was my language. I told you, I wrote --
13 helped her write this letter. She didn't have the
14 knowledge to be able to do this. And I intended to help
15 her when they answered her back.

16 Q And you had experience and knowledge in this
17 area?

18 A Well, I had quite a bit of business experience
19 after I was grounded. I didn't go into that yesterday.
20 After I was grounded as an airline pilot I had to do
21 something to make a living, so I went into the
22 construction business. And I have a lot of experience in
23 construction things and insurance problems on construction
24 jobs and all that, yes.

25 Q Is it your understanding that Kellie eventually

1 obtained a settlement?

2 A Yes. I don't know how much. The insurance
3 company never told me.

4 Q And she didn't sue you?

5 A No.

6 Q And did you ever tell Ms. Montoya that you were
7 investigating the cause of the accident?

8 A I don't believe I did.

9 Q Did you tell Ms. Montoya that you believed the
10 broken tie rod, not Tony's driving error, was the cause of
11 the accident?

12 A At that point, no, I didn't.

13 Q Did you tell Ms. Montoya that you were filing a
14 lawsuit against Ford?

15 A No, I don't believe that I did.

16 Q And after she received the settlement money, you
17 really didn't want to have any further contact with her;
18 is that fair to say?

19 A You saw what happened yesterday. When she used
20 to call up and start talking to me and calling me dad --
21 which it was a normal thing -- I would start crying. I
22 was trying to get her to move on. I told her that -- I
23 said, "You're going to have to move on from Tony." And I
24 don't think I could be any more sensitive.

25 You saw yesterday my Italian heritage background

1 on my mother's side come out. I just -- I couldn't help
2 crying. I'm not ashamed of it, but I was doing a lot of
3 that, and for a long time. I never thought I would do
4 that kind of thing.

5 But when you've flown a whole airplane full of
6 body bags to Dover, Delaware with GIs in it, there's not
7 much crying you can do except when a son or daughter or
8 somebody close to you dies.

9 Q So after this, Mr. Clayton, you wanted to settle
10 this with Kellie and move on?

11 A What?

12 Q After this time you wanted to sever those
13 connections with Kellie and have her move on; is that
14 fair?

15 A Yes, she had to continue her life.

16 MR. LARSEN: No further questions.

17 THE COURT: Further direct examination,
18 Mr. Emblem?

19 REDIRECT EXAMINATION

20 BY MR. EMBLEM:

21 Q Are you okay?

22 A Yeah.

23 Q When you rode in the car, the Explorer, with
24 Tony and drove the Explorer, did it drive like a truck?
25 Did it drive like a car? Can you describe how it felt to

Addendum 90

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
 UTAH AUTO COLLECTION,)
 et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF KELLIE MONTOYA BAKER

TAKEN AT: SCOTT MATHESON COURTHOUSE
450 South State
Salt Lake City, Utah

DATE: Monday, January 29, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR
Kelly Wilburn, RPR, CSR

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By bm SALT LAKE COUNTY
Deputy Clerk



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 Kelly Wilburn, RPR, CSR

<p style="text-align: right;">Page 14</p> <p>1 Do you remember the hospital?</p> <p>2 A I remember coming out of the hospital,</p> <p>3 the doors, but I don't remember.</p> <p>4 Q You don't remember being in the</p> <p>5 hospital?</p> <p>6 A No.</p> <p>7 Q Do you remember -- you don't remember</p> <p>8 riding in an ambulance?</p> <p>9 A No.</p> <p>10 Q You don't remember riding in a</p> <p>11 helicopter?</p> <p>12 A No.</p> <p>13 Q Do you know which hospital that you came</p> <p>14 out of that you remember going through the doors?</p> <p>15 A LDS.</p> <p>16 Q Here in Salt Lake City?</p> <p>17 A Yes.</p> <p>18 Q Do you remember going to a hospital in</p> <p>19 Wyoming?</p> <p>20 A No.</p> <p>21 Q Did you come to understand why you had</p> <p>22 no memory?</p> <p>23 A Later on.</p> <p>24 Q During the crash, you received some</p> <p>25 injuries?</p>	<p style="text-align: right;">Page 16</p> <p>1 orthodontist had to get the braces to pull up, and it</p> <p>2 hurt so bad to even touch.</p> <p>3 Q Did you have any cuts?</p> <p>4 A Excuse me?</p> <p>5 Q Cuts. Were you cut?</p> <p>6 A My face was.</p> <p>7 Q Did you -- are the scars still visible,</p> <p>8 or have they gone pretty much away?</p> <p>9 A You have to look really close to see</p> <p>10 them.</p> <p>11 Q So you --</p> <p>12 A But I can't see them unless I'm right on</p> <p>13 top of it.</p> <p>14 Q Did something happen to your eyes?</p> <p>15 A Yes.</p> <p>16 Q What happened?</p> <p>17 A I have to wear prisms because I see</p> <p>18 double.</p> <p>19 Q Okay. Before that, you did not have</p> <p>20 that trouble?</p> <p>21 A No.</p> <p>22 Q Did you learn anything about a traumatic</p> <p>23 brain injury?</p> <p>24 A No.</p> <p>25 MR. LARSEN: Objection. Now this is</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes.</p> <p>2 Q Later on, did you understand what those</p> <p>3 injuries were?</p> <p>4 A From the car accident.</p> <p>5 Q Right. But what was hurt?</p> <p>6 This is what I was telling you about the</p> <p>7 two parts of the trial. This part you can just say</p> <p>8 what was hurt. You can't say how bad or how much.</p> <p>9 What was hurt?</p> <p>10 A I lost a tooth and I get headaches</p> <p>11 and --</p> <p>12 Q Related to the tooth that you lost, was</p> <p>13 there any additional dental work that had to be done?</p> <p>14 A Yes. I had to have a root canal done on</p> <p>15 my other tooth because it was all the way down, and</p> <p>16 they had to literally push it back up and then they</p> <p>17 did the root canal.</p> <p>18 Q Were you wearing braces?</p> <p>19 A Yes.</p> <p>20 Q At the time of the crash, you were</p> <p>21 wearing braces?</p> <p>22 A Yes.</p> <p>23 Q So the second tooth was also knocked</p> <p>24 loose and they put it back in?</p> <p>25 A Well, yeah. It was halfway down, and my</p>	<p style="text-align: right;">Page 17</p> <p>1 going beyond the scope.</p> <p>2 THE COURT: Sustained.</p> <p>3 Q (BY MR. EMBLEM) Did you have any</p> <p>4 emotional problems --</p> <p>5 A Yes.</p> <p>6 Q -- related to the crash?</p> <p>7 MR. LARSEN: Objection, your Honor, the</p> <p>8 same, beyond the scope.</p> <p>9 THE COURT: Sustained.</p> <p>10 Q (BY MR. EMBLEM) Do you know an attorney</p> <p>11 named Mr. Barton?</p> <p>12 A Yes.</p> <p>13 Q Did you have a meeting with Mr. Barton?</p> <p>14 A Yes.</p> <p>15 Q Did he help you obtain a -- excuse me a</p> <p>16 second.</p> <p>17 Did Mr. Barton help you get your medical</p> <p>18 bills paid?</p> <p>19 A Yes.</p> <p>20 MR. EMBLEM: Okay. I think that's all</p> <p>21 I've got right now. Thank you.</p> <p>22 THE COURT: Cross examination,</p> <p>23 Mr. Larsen?</p> <p>24 MR. LARSEN: Yes.</p> <p>25 THE WITNESS: Can I get some water?</p>

5 (Pages 14 to 17)

1 A No.

2 Q No?

3 Just excuse me for a minute while my
4 assistant gets the deposition transcript.

5 Do you remember in your deposition
6 saying that Tony told you that night that you were
7 going to go to Wyoming the next day?

8 A I don't remember, to be honest with you.
9 I'm sorry. I don't remember everything I said back
10 then.

11 Q Ms. Montoya, I'm going to show you
12 what's an envelope and it has a deposition transcript
13 in it. It's been hermetically sealed in a mayonnaise
14 jar since 9:00 a.m. this morning.

15 This is a thick book. I'm going to ask
16 you if you can please turn to page 17. And what
17 we'll do here is I'll have you turn to page 17, and I
18 will show you the line and page. And I will read the
19 question and read the answer, and I want you to
20 follow along with me when I read it, and I will ask
21 if that was your testimony at the time and if that
22 refreshes your memory. Okay?

23 And on line 17 --

24 MR. EMBLEM: Page 17, line 17; is that
25 correct?

1 A It's been a while.

2 Q It's been a few years since then.

3 And at your deposition your attorney was
4 present, is that right, Mr. Brian Steffensen?

5 A Yes.

6 Q Mr. Emblem wasn't present at that time?

7 A No.

8 Q And you had an opportunity to meet with
9 your attorney before the deposition?

10 A Yes.

11 Q And so you get back to Salt Lake about 8
12 or 9 o'clock. Did you go straight to bed that night?

13 A I went home to my sister's and I went to
14 bed, yeah.

15 Q And do you recall if Tony told you that
16 you were going to go to Wyoming the next morning
17 before you went to bed?

18 A I don't remember how it all came about,
19 how...

20 Q And did you get up early the next
21 morning?

22 A Yes.

23 Q About what time?

24 A If I'm remembering right, I think we got
25 up at eight. I got up at eight. I don't know what

1 MR. LARSEN: Page 17, excuse me, line 2.

2 Q (BY MR. LARSEN) It has a little "Q" for
3 "Question." Do you see that on line 2?

4 A Okay.

5 Q And it says, "About what time did you
6 arrive back in Salt Lake?"

7 "Answer: We got home about eight,
8 quarter to nine, something like that. You have to
9 remember the drive and everything. He didn't like
10 driving fast at night. He just went a little under
11 the speed limit to make sure we made it home. We had
12 to pay attention to the sides because there's like a
13 bunch of deer and stuff that comes out, so I'd pay
14 attention when he was driving. So I'd be watching
15 out and he would just drive."

16 Did I read that correctly?

17 A Yes.

18 Q And was that a true and accurate answer
19 at the time?

20 A I would think so, but I can't remember.

21 Q But at the time of your deposition --
22 this was taken on -- on the front of it, it says
23 "October 28, 2003."

24 A I don't remember.

25 Q It's been --

1 time Tony got up.

2 Q And what time were you going to leave?

3 A I don't remember that time.

4 Q Do you know what time you left Salt
5 Lake?

6 A I don't know.

7 Q Do you recall in your deposition saying
8 it was about noon that you left to go to Evanston?

9 A I don't remember that.

10 Q Is it your understanding the accident
11 happened about 1:30 in the afternoon?

12 A I didn't know that.

13 Q Okay. And did you do anything before
14 you left that morning other than get ready?

15 A The stuff that I said earlier is all I
16 can -- that I know I did.

17 Q Did you go to breakfast with Tony?

18 A No.

19 Q And when you left Salt Lake that
20 morning, did you stop anywhere before you went up
21 towards Park City and on the way to Evanston?

22 A Not that I can remember.

23 Q You don't remember gassing up or going
24 to a restaurant or anything?

25 A Huh-uh.

1 Q Oh, sure.
 2 A Now, what do you want me to do? I'm
 3 sorry.
 4 Q Just take a look at it and look at the
 5 second page and tell me if you recognize your
 6 signature on that document.
 7 A Yes.
 8 Q And what is that document?
 9 A I think it's something for my Geico
 10 thing.
 11 Q Your letter to Geico?
 12 A Yeah.
 13 Q And you signed that letter?
 14 A Yes.
 15 Q Okay. I'd like to show that on the
 16 overhead, if we could.
 17 Is that -- this is the second page of
 18 Exhibit 655?
 19 A Yes.
 20 Q And is that your signature up there?
 21 A Yes.
 22 Q And it looks like it was notarized as
 23 well; is that correct?
 24 A Yes.
 25 Q Do you know why it was notarized?

1 A I don't remember.
 2 Q Okay. And did your mother prepare this
 3 letter or was it your -- or was it Mr. Clayton? Do
 4 you remember?
 5 A Mr. Clayton.
 6 Q Okay. And did Mr. or Mrs. Clayton tell
 7 you at any time that they were suing Ford Motor
 8 Company?
 9 A No.
 10 Q And was the purpose of this letter to
 11 get a settlement from the Claytons' insurance
 12 company?
 13 A Excuse me?
 14 Q Was the purpose of this letter to get a
 15 settlement from the Claytons' insurance company?
 16 A I don't understand what you are saying.
 17 Q What was the purpose of this letter?
 18 A I don't know.
 19 Q Was it your understanding that you were
 20 seeking compensation against Mr. Clayton's insurance
 21 company?
 22 A I wasn't seeking anything from them.
 23 Q Okay. Well, let's take a look at the
 24 first page of that letter.
 25 MR. LARSEN: If we can flip to the first

1 page, please. And up in the upper left-hand
 2 corner -- you can draw a box around that.
 3 Thank you.
 4 Q (BY MR. LARSEN) What's the date of this
 5 letter, Ms. Montoya?
 6 A March 9, 1999.
 7 Q So at this point, it's about three or
 8 four months after the accident; is that right?
 9 A I guess.
 10 Q Okay. And this letter is to Mr. John
 11 Richards at Geico Insurance Company; is that correct?
 12 A Yes.
 13 Q And at the first line of this letter --
 14 let me read it out loud and tell me if I'm reading
 15 correctly: "I'm writing to you to resolve any" --
 16 "to resolve my claim against Fred Clayton, whose car
 17 I was riding in with my fiancT, Tony Clayton, when
 18 the tragic accident occurred."
 19 Is that a true statement?
 20 A Yes, but I didn't write that.
 21 Q But that was the purpose of the letter;
 22 is that right?
 23 A I guess.
 24 Q Okay. And was it your understanding
 25 that the accident occurred when Tony took his eyes

1 off the road?
 2 A What?
 3 Q Was it your understanding that the
 4 accident occurred when Tony took his eyes off the
 5 road?
 6 A No.
 7 Q Do you remember telling your attorney,
 8 Keith Barton, that that's what happened?
 9 A No. I don't remember saying that.
 10 Q And this letter lists all your injuries
 11 that you had at the time; is that right?
 12 A Uh-huh. Yes.
 13 Q And that's --
 14 A I'm sorry. Yes.
 15 Q And that's in the middle of the letter;
 16 is that right?
 17 A Right here?
 18 Q Yes.
 19 A Yes.
 20 Q Okay. And it says that you sustained --
 21 MR. LARSEN: If you can blow that up.
 22 Q (BY MR. LARSEN) -- a scar on the right
 23 side of your face, a scar on your chin, and missing
 24 tooth; is that right?
 25 A I'm sorry. I couldn't see where you are

1 reading at.
 2 Q I'm sorry. It's -- you can see it on
 3 the overhead, if you'd like.
 4 A Okay.
 5 Q And then you had to have prisms put in?
 6 A Yes.
 7 Q Okay. And then --
 8 MR. LARSEN: Would you show the next
 9 paragraph, please?
 10 Q (BY MR. LARSEN) And this letter says
 11 that you did not wish to file a lawsuit; is that
 12 correct?
 13 A I don't understand.
 14 Q This letter says that you did not wish
 15 to file a lawsuit; is that right?
 16 A I didn't want to sue nobody.
 17 Q And you'd had a bad experience with
 18 lawyers before, at least your father had; is that
 19 right?
 20 A My dad.
 21 Q And you were afraid that the lawyers
 22 would take some of the recovery; is that right?
 23 A I -- I don't remember.
 24 Q Is that -- okay. And do you remember
 25 requesting that they help pay your bills?

1 A I never requested anything. They
 2 offered.
 3 Q Okay. And did you talk to them?
 4 A Who? Fred and Dee?
 5 Q Yes.
 6 A After the car accident?
 7 Q Yes.
 8 A I don't remember.
 9 Q Now, eventually, you went and hired an
 10 attorney; is that right?
 11 A Was that Keith Barton?
 12 Q Yes, Keith Barton.
 13 A (Nodding head.)
 14 Q And do you remember how you first got in
 15 contact with Keith Barton?
 16 A I don't.
 17 Q Did he come to your home?
 18 A He came to my -- yes.
 19 Q And was your mother present?
 20 A Yes.
 21 Q And he interviewed you?
 22 A Yes.
 23 Q And then he filed a claim against the
 24 insurance company and obtained a settlement; is that
 25 right?

1 A I think so, yes.
 2 Q And then you were paid from that
 3 settlement; is that right?
 4 A Yes.
 5 Q And do you remember signing a contract
 6 with Mr. Barton agreeing to have him represent you?
 7 A If I remember right, yes.
 8 Q Okay. I'm going to hand you what's
 9 marked as Exhibit 658.
 10 MR. EMBLEM: Your Honor, the contract
 11 with an attorney is privileged communication and the
 12 client has not waived the privilege.
 13 THE COURT: Do you want to come up to
 14 the --
 15 (At the side bar.)
 16 THE COURT: Can I see the exhibit? May
 17 I see the exhibit? It's attorney-client privilege.
 18 MR. EMBLEM: The objection, in front of
 19 the jury, there is no reason for him to be discussing
 20 the contract with Keith Barton.
 21 MR. LARSEN: We already had a pretrial
 22 motion on this and all of these documents, including
 23 this one, where they made the same argument, and
 24 there was a pretrial ruling that these documents were
 25 admissible and any privilege had been waived.

1 MR. EMBLEM: I don't see anywhere that
 2 she's waived her privilege of private communications
 3 with counsel.
 4 THE COURT: Well --
 5 MR. LARSEN: This is --
 6 THE COURT: Well, let me -- I'll excuse
 7 the jury, and we'll sort through this a little bit
 8 before we go on.
 9 Mr. Emblem.
 10 (End of side bar conference.)
 11 THE COURT: Ladies and gentlemen, I'm
 12 going to excuse you -- well, actually, we are at 20
 13 minutes to 12 -- to let us sort through some matters.
 14 Ms. Barker -- Baker -- I'm sorry.
 15 Ms. Baker, let's have you step down and watch your
 16 step on the way down.
 17 Ladies and gentlemen, I'm going to
 18 excuse you for the lunch break here and have you come
 19 back at 1:30. During this break, you are not to form
 20 or to express any opinions among yourselves or with
 21 others. You're not to do any independent
 22 investigation or analysis of any type, nature, or
 23 description. And we'll have you back here at 1:30.
 24 You're excused.
 25 THE BAILIFF: All rise.

1 MR. EMBLEM: What is the exhibit number?

2 MR. LARSEN: 668.

3 THE COURT: 668?

4 MR. LARSEN: I'm sorry. The photocopy
5 doesn't have the number on it, but it's 668.

6 THE COURT: 668. This other one was
7 658, wasn't it?

8 Well, let's deal with this, then.

9 That's the offer of proof on Exhibit 668. Any
10 objection, Mr. Emblem?

11 MR. EMBLEM: Actually, I wasn't sure
12 what the offer of proof was. That there was a
13 settlement? I think it gives the termination date of
14 the -- of representation, June 29, 1999.

15 Is it important that she settled with an
16 insurance company? Usually insurance matters are not
17 reviewed during the course of a trial. I'm not sure
18 what the relevance is.

19 THE COURT: The objection is relevance.
20 Why would this be relevant?

21 MR. LARSEN: This is relevant to show,
22 as we've discussed before, on the statute of
23 limitations issue, it's probative to show that Kellie
24 Montoya knew she had been in an accident, retained an
25 attorney to represent her in that accident, and

1 signed a full settlement and release of all claims
2 for the injuries that she received in that accident.
3 And those injuries are against -- and a claim was
4 made against Fred Clayton, who is also a plaintiff in
5 this matter. So it's relevant for a few reasons.

6 First of all, to show that now
7 Mr. Clayton has nothing to fear from Kellie Montoya
8 because he's settled and resolved all claims, and
9 that's why we're here today. So we have the two
10 plaintiffs that are involved in this lawsuit, so that
11 obviously goes to some bias and motive and intent in
12 the testimony.

13 But it also goes to the fact that it
14 shows that, at least by that date, that she settled
15 these claims with her attorney and Ms. Montoya knew
16 and understood the harm and the cause related to the
17 statute of limitations, that she'd been in an
18 accident, that she'd received injuries, and that she
19 had hired an attorney, and that she sought
20 compensation for those injuries and was receiving
21 compensation for the injuries in the accident and was
22 willing to release Fred Clayton and the insurance
23 company and the estate of Tony, her fianc 's estate,
24 from any and all claims arising from that accident.

25 And so it really just goes to the

1 statute of limitations issue. Otherwise, none of
2 this would be admissible and none of this would be
3 relevant. And that's why we had the discussion at
4 the pretrial as to why would this be relevant in this
5 case, and it's only because of the statute of
6 limitations issue.

7 THE COURT: So it is the date and the
8 fact that -- the date that all claims were released?

9 MR. LARSEN: Correct.

10 MR. EMBLEM: They weren't released
11 against Ford.

12 MR. LARSEN: And the amount has been
13 redacted, and we are not claiming it was a release
14 against Ford Motor Company. But the amount has been
15 redacted.

16 And Kellie Montoya has already testified
17 that she had no discussions with Mr. Clayton at this
18 time that he was going to pursue a claim against Ford
19 Motor Company. That was not mentioned at that time.
20 And so there's issues there relating to whether or
21 not Mr. Clayton wanted her -- to notify her of that,
22 that particular claim, because he obviously filed a
23 timely claim.

24 THE COURT: Well, let me ask you this.
25 I -- do I correctly see a distinction between the

1 relevant -- the relevant fact you wish to elicit,
2 which is that a release of claims in full with
3 Mr. Clayton was signed on the 29th of June, 1999, and
4 the relevance of this document itself, that the jury
5 actually have the release?

6 Now, see, I see sort of a distinction
7 between the fact of the release and the date when it
8 occurred and the actual document itself. Is that
9 distinct? Do I make a proper distinction there --

10 MR. LARSEN: Well, you know --

11 THE COURT: -- between the relevant fact
12 and a document which may contain that fact?

13 MR. LARSEN: I think the document --

14 THE COURT: But it contains many other
15 things also.

16 MR. LARSEN: Maybe not every word in the
17 document is always relevant. You may pick out
18 something particular in a document that is relevant
19 where the rest may be legalese, which is a lot of
20 legalese now that I don't think the jury would really
21 be that interested in.

22 But it's not prejudicial. It's not
23 harmful. It doesn't make the document not
24 admissible. It's still probative. And the
25 information that's in the document is probative to an

1 Q. Okay. And it looks like the date of this
2 document is April 13, 1999. Does that sound about the
3 right time period?

4 A. I don't remember when I signed it.

5 Q. Okay. Is that your signature underneath
6 where it says "Client"?

7 A. Yes.

8 Q. And is that Mr. Barton's signature above
9 yours?

10 A. I guess so. I don't remember his signature,
11 but I guess that's what it is.

12 Q. Okay. And then in the upper portion of the
13 contract, under paragraph No. 2, under "Scope of
14 Services," I'm gonna read that and then ask you what
15 your understanding was regarding this language.
16 Paragraph No. 2:

17 "Scope of services: You are hiring
18 me (us) as your attorneys to represent
19 you in the matter of your claims against
20 all parties arising out of injuries
21 which occurred on or about the 27th day
22 of November, 1999 -- 1998."

23 Did I read that correctly?

24 A. Yes.

25 Q. And was it your understanding from meeting

1 with Mr. Barton that he was going to be your attorney
2 for any claims that you might have arising out of the
3 automobile accident you had with Tony Clayton?

4 A. He never said anything like that to me.

5 Q. Mr. Barton never told you that he was gonna
6 represent you?

7 A. Only as for the insurance. But nothing for
8 anything else.

9 Q. Okay. But it was your understanding he was
10 gonna pursue whatever claims that you had for whatever
11 remedies against any persons that might be
12 responsible; is that right?

13 A. I don't know.

14 Q. Who did you understand that you were gonna
15 pursue claims against?

16 A. Just the insurance company.

17 Q. Okay. And did you understand that, that in
18 order to make a claim against the insurance company
19 you were making a claim against Fred Clayton?

20 A. I, I, to be honest with you, I didn't
21 understand that at that time, no.

22 Q. Did, did Mr. Barton explain that to you?
23 That he'd have to make a claim against the driver and
24 the insurance company?

25 A. I can't remember what he told me.

1 Q. Okay. Let me, let me have you turn to
2 page 60 of your, your deposition transcript that's
3 right in front of you for a minute. And this is the
4 same deposition transcript we were talking about
5 earlier.

6 And at the time of your deposition -- let me
7 find the line and the page and I'll read that
8 outside -- out loud and then ask if you under -- if
9 that was what was discussed at that time. On line 17
10 there's a question:

11 "Did you understand that in order to
12 make a claim to Geico Insurance
13 Company -- or insurance you had to make
14 a claim against the Claytons, and that
15 their insurance company would then cover
16 it?"

17 And there was: "Objection, foundation."

18 And then the answer is:

19 "At the time, I did not. I did
20 after it got explained what was going to
21 happen.

22 "Question: Who explained that?

23 "Answer: Keith Barton."

24 Does that help refresh your memory?

25 A. I don't remember.

1 Q. Okay. Was that your testimony at the time,
2 that Keith Barton explained to you that you had to
3 file suit against the Claytons?

4 A. To be honest with you, I cannot remember.

5 Q. And the Claytons were going to be your
6 in-laws; is that right?

7 A. That's right.

8 Q. Now, to hire Mr. Barton did you see any of
9 his advertisements on TV, or billboards, or in a phone
10 book; do you remember?

11 A. I can't remember. I don't remember how I
12 even -- how.

13 Q. Do, do you remember the jingle: "One call,
14 that's all"?

15 A. Now, nowadays, yeah. But I don't remember
16 then.

17 Q. Okay. And it's your understanding that's
18 Mr. Barton's advertising?

19 A. Yeah.

20 Q. The "One call, that's all"?

21 A. Yes.

22 Q. Okay. And then did Mr. Barton obtain a
23 settlement for you?

24 A. Yes.

25 Q. And let me hand you what's going to be marked

1 as -- or it is marked as Defendant's Exhibit 668. Do
2 you recognize your signature at the bottom of that
3 page?

4 A. Yes.

5 Q. And that document has already been admitted
6 into evidence. And it's now on the overhead screen.

7 MR. EMBLEM: I'm sorry your Honor, I just
8 want to make sure the record is clear. I believe he
9 misspoke. It's Defendant's 668.

10 MR. LARSEN: Did I?

11 MR. EMBLEM: I thought you said plaintiff's.

12 MR. LARSEN: Oh, I apologize. It's
13 Defendant's 668. And maybe we can blow up that
14 signature page at the bottom.

15 Q. (By Mr. Larsen) Is that your signature --

16 MR. LARSEN: Let's see, it would be above
17 that, that's the notary. There we go.

18 Q. (By Mr. Larsen) Is that your signature right
19 there in the top of that screen there --

20 A. Yes.

21 Q. -- "Kellie Montoya"?

22 A. Yes.

23 Q. And the date of the settlement was June 29,
24 1999?

25 A. I don't remember what day it was.

1 Q. Okay. But it was just a couple of months
2 after you had hired Mr. Barton?

3 A. I don't remember what day it was.

4 Q. Okay. And at the very top of the, of the
5 release -- I'm gonna read this out loud and then ask
6 you some questions about it.

7 "I/we, Kellie Montoya, releasors, of
8 3874 South Rockwood, No. 66, City of
9 Salt Lake City, State Utah."

10 Was that your address at the time?

11 A. I didn't know where you are reading that.
12 Now I found it, sorry.

13 Q. Was that, was that your address at the time?

14 A. I think so.

15 Q. Okay.

16 "Being over the age of majority, for
17 and in consideration of a draft sum of
18 dollars, lawful money of the United
19 States of America, to me/us and hand
20 paid the receipt of which is hereby
21 acknowledged due to myself, ourselves,
22 my or our heirs, executors,
23 administrators, successors, and assigns,
24 hereby release -- or remise, release,
25 and forever discharge Frederick

1 Clayton."

2 Sorry, I had to squint to see that. Did I
3 read that correctly?

4 A. Uh-huh (affirmative.)

5 Q. Okay. And was it your understanding then
6 that in signing this document you made a settlement
7 with Mr. Fred Clayton?

8 A. I understood that that was his insurance.

9 Q. And was that the end of your representation
10 with Mr. Barton?

11 A. Yes. That I know of, yes.

12 Q. And did you receive the settlement money?

13 A. Yes.

14 Q. And at the time did you -- well, strike that.

15 And was your mom present when you signed this
16 release of claim?

17 A. My mom was with me on all of -- everything
18 that we did with Keith Barton.

19 Q. And did your mother review this document to
20 make sure that it was okay to sign?

21 A. My mom reviewed everything, yes.

22 Q. And have you always trusted your mother?

23 A. Yes, I do.

24 Q. And she's taken special care of you
25 throughout your life, hasn't she?

1 A. What do you mean?

2 Q. I mean just throughout your life. Your
3 mother -- you've always been close with your mother
4 and she's taken special care of you.

5 A. When I was a little girl, of course. Any
6 mother is gonna take care of her child.

7 Q. And now you are an adult and you live on --
8 you live with your husband; is that right?

9 A. Yes.

10 Q. Just a moment.

11 At the time that you signed the settlement
12 agreement were you forced or coerced to sign it?

13 A. No.

14 Q. Was it voluntary?

15 A. It -- because my mom explained it to me I
16 voluntary signed it, yes.

17 Q. And did Mr. Barton, your attorney, also
18 advise you that it was a reasonable settlement?

19 A. I don't remember.

20 Q. Did he also advise you to sign the document?

21 A. I don't remember.

22 Q. Okay. And once you received that settlement
23 amount did you have any further contact with
24 Mr. Barton?

25 A. I don't remember.

Addendum 91

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,

Plaintiffs,

vs.

UTAH AUTO COLLECTION,
et al.,

Defendants.

Case No. 000909522

Judge Joseph C. Fratto

PLAINTIFF'S OPENING ARGUMENTS

DATE: January 5, 2007
REPORTED BY: Kelly L. Wilburn, CSR, RPR

DATE: January 9, 2007
REPORTED BY: Catherine L. Kennedy, CSR, RPR

FILED DISTRICT COURT
Third Judicial District

NOV 20 2007

By bn SALT LAKE COUNTY
Deputy Clerk



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<p style="text-align: right;">Page 14</p> <p>1 and in their waning years care for Fred and his mom, 2 Tony's mom Dolores, in their waning years, as is 3 traditional in their family, as in many families. 4 Not everyone puts their people in an old folks' home, 5 and they don't do that. 6 When they got into the truck that 7 morning, both Kellie and Tony put on their seat 8 belts. Dolores Clayton, Tony's mother, will explain 9 to you that Tony never, ever drove away unless 10 everyone was belted. It was important to him. 11 When Tony called his cousin the night 12 before -- they were best pals, you know, they grew up 13 together -- he told Phil that he had gone off his 14 Atkins diet eating at Kellie's mom's, that he enjoyed 15 the muffins, and that he really enjoyed the mashed 16 potatoes. And that morning, as he left West Valley 17 City, Tony pulled through the Wienerschnitzel and got 18 a Diet Coke and a hot dog. 19 Now, Tony was 5 foot 7 and he weighed 20 240 or so pounds. He was a big boy. And for Tony, 21 dieting was always a part of his life. But still 22 feeling a little bit guilty, he told Kellie that they 23 could diet next week. 24 The decade before, in 1998, Ford 25 suffered a setback with their Bronco II. The</p>	<p style="text-align: right;">Page 16</p> <p>1 damage, the quick fix. When the Bronco II had 2 adverse publicity, Ford would rename that new 3 Bronco II four-door Explorer and continued marketing 4 the unsafe vehicle to the public. Still the UN46, 5 which was their designation put on the vehicle by the 6 factory. 7 Ford would create its own safety testing 8 criteria using a computer. Ford would claim the 9 Explorer passed their own testing requirements, 10 testing requirements used only by Ford and no other 11 auto manufacturer, computer testing. But Ford would 12 fail to preserve the proof that the Explorer actually 13 passed, so no one could repeat the tests. There 14 would be no peer review. Ford claimed the Explorer 15 passed and signed off the UN46 Explorer as safe. 16 Ford company meeting minutes will show 17 the UN46 Bronco II became the wildly popular Ford 18 Explorer. Ford was self-certifying, and that meant 19 no peer review. Self-certifying -- if the Explorer 20 met some government standards, that was not evidence 21 that it was safe. 22 The reason the UN46, the new Ford 23 Explorer, was failing the accident avoidance 24 maneuvers -- accident avoidance is when something 25 rolls out in the street in front of you and you have</p>
<p style="text-align: right;">Page 15</p> <p>Bronco II was failing Consumer Union's accident avoidance test drive test. Consumers Union publishes the consumers magazine publication, Consumer Reports. Consumer Reports advises buyers what products are good, what products are not so good. They rate them. The Consumer Reports magazine published an article that said, in quotes -- MR. O'NEILL: Your Honor, let me object. I believe this is part of the Motion in Limine. I'm not sure this is appropriate to be talking about in -- THE COURT: May I have you come to the bench? (Side bar conference.) THE COURT: The objection is overruled. MR. EMBLEM: Consumers Union, in the Consumer Reports magazine -- it was a Nader organization, if you remember Ralph Nader -- stated, "Prudent buyers will avoid the Bronco II. Its handling in our tests was poor. We don't think any vehicle should lift both wheels so far off the ground, in our tests, on smooth, dry pavement." Ford engineers frantically reviewed the Bronco II's design to improve its crash-worthiness. Ford's PR people also went to work to minimize the</p>	<p style="text-align: right;">Page 17</p> <p>1 to quickly dart to get around it, a child, a ball, 2 maybe a deer or moose in this part of the country. 3 Accident avoidance, you have to move quickly, and 4 that's when it was failing. 5 The reason it was failing is the wheel 6 track, the distance between the wheels center to 7 center, was too narrow and the center of gravity was 8 too high, and that made the vehicle too easy to roll 9 over. It was top-heavy. It was clumsy or, in plain 10 English, it was not safe. 11 But because of Ford's marketing, the 12 Explorer had become the most sought after SUV, 13 earning Ford some 40 percent profit per unit. Fred 14 and Tony paid \$26,466 for their Ford Explorer. 15 That's \$10,500 in profit. That's -- they made 40,000 16 of these vehicles a month. The factories worked 17 maximum overtime to produce them. It was the most 18 popular vehicle. 19 Forty thousand a month, 10,500 a unit, 20 that is \$120 million a month or almost \$5 billion a 21 year in profit. 22 The road to safety is never the road 23 less traveled, ladies and gentlemen. It's not a 24 simple matter to drop a huge engine on four wheels, 25 wrap it in steel and glass and leather and put air</p>

Addendum 92

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
) TRIAL TRANSCRIPT
UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

ANDREW N. GILBERG

January 11, 2007
January 12, 2007

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By *fn* SALT LAKE COUNTY
Deputy Clerk

Wendy Alcock
Kelly Wilburn
Registered Professional Reporters



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1 A I don't think that this latch broke as a result
2 of the accident. It was damaged subsequent to coming
3 open.

4 Q And it's your understanding that NHTSA, the
5 governmental agency that adopts the federal motor vehicle
6 standards, it has a latch strength certification that's
7 required for all U.S. automakers; is that right?

8 A There's a federal standard called 206 that
9 relates to the strength of the latch.

10 Q And FMVSS-206 requires the latch be strong
11 enough to withstand 2,500 pounds of lateral force; is that
12 correct?

13 A Longitudinal force. And then 2,000 pounds of
14 shearing or lateral force.

15 Q 2,000 pounds in the direction of the door
16 opening?

17 A Right.

18 Q And you don't dispute that the mini latch design
19 meets the FMVSS standards?

20 A Not -- you know, I don't know that -- I wouldn't
21 be surprised if it did. I haven't tested the latch.

22 Q You never tested the mini latch to see how
23 strong it is?

24 A I've tested it many times, but not in the 206
25 test, which is a laboratory test where the latch is bolted

1 to a fixture.

2 Q So in your 20 years as a door latch expert,
3 you've never done a door latch strength test, the 206
4 test, on a mini latch?

5 A No. It's not really relevant to how the latch
6 performs in the door, so all the testing I do includes the
7 body structure where it's important, or the B pillar or
8 whatever. It's not a laboratory test as such, it's more
9 of a simulation of a field accident.

10 Q So I understand your testimony correctly, you're
11 not critical, then, of the strength of the mini latch?

12 A I don't think it's a factor here.

13 Q Well, but the question was: You're not critical
14 of the strength of the mini latch design?

15 A Not in this case, no.

16 Q You inspected the Clayton latch, I think you
17 said, in -- was it June or May, 2005?

18 A May 13th, '05.

19 Q And when you inspected that latch, did you look
20 to see if the latch was still in a locked position?

21 A We did look at the linkage positions, and I
22 think I made some notes regarding that.

23 Q And is it true that when you inspected the latch
24 it was still locked?

25 A Yes.

1 Q And that was the intermittent lever that you
2 demonstrated to the jury yesterday; is that right?

3 A The way we determined it was looking at a
4 portion of the intermittent lever, which is visible
5 through an opening here.

6 Q Can you demonstrate for the jury how you can
7 tell whether the latch is in the locked position?

8 THE COURT: Referring to which exhibit?

9 MR. LARSEN: I think he's referring to --

10 THE WITNESS: P316.

11 MR. LARSEN: And you can step down in front of
12 the jury, if that's okay.

13 THE WITNESS: There's a window in the latch
14 frame here, a rectangular window.

15 THE COURT: Mr. Gilberg, you may not address the
16 jury. You may only respond to questions.

17 Q (BY MR. LARSEN) Mr. Gilberg, can you
18 demonstrate how you can tell from looking in that window
19 how the latch intermittent lever was in a locked position?

20 A If you view the intermittent lever, there's an
21 extension of the tab here.

22 Q Can you show that to the jury?

23 A It's easier to see in the damaged latch than it
24 is on this one. Inside the opening there's an extension
25 of this lever that's visible.

1 Q Like a tab sticking through a small window,
2 about half an inch long?

3 A Ordinarily the latch doesn't stick out. In the
4 accident latch you can see it.

5 Q So when it's --

6 THE COURT: May I interrupt? Is the record able
7 to hear the questions and answers?

8 COURT REPORTER: Yes.

9 THE COURT: Keep your voice up.

10 Q (BY MR. LARSEN) When the intermittent lever is
11 in a locked position, that little tab in the intermittent
12 lever in the window is near the bottom; is that right?

13 A That's right. And the reason you can see it on
14 the accident latch is because this whole face of the latch
15 is bent this way, so it changes the perspective you get
16 when the look through the window.

17 Q But the fork bolts were open, or at least
18 partially open when you inspected the latch; is that
19 right?

20 A Well, they were pretty much in the condition you
21 see it here.

22 THE COURT: You're referring to --

23 THE WITNESS: This is Exhibit 334.

24 Q (BY MR. LARSEN) And they were in the open
25 position?

1 A Not completely, but open far enough to release
2 the latch.

3 Q They weren't opened all the way as if the door
4 had been unlatched?

5 A The lower jaw could probably move a few more
6 degrees towards the open direction, but there's not enough
7 difference between that and the open position to call that
8 lower jaw in the secondary position. It's really open.
9 It's just not fully open. And it's pinned somewhat in
10 that condition because of the way the frame is damaged.

11 Q And if the door had been unlatched because of
12 foreshortening, you would expect that the fork bolts would
13 be in a completely open position?

14 A If the door didn't interact with the ground and
15 get slammed into the ground several times, I would agree
16 with that.

17 Q Take out the ground contact and let me just ask
18 the question again. If the door was unlatched because of
19 door foreshortening on the rod, the fork bolts would be in
20 a completely open position?

21 A Not necessarily true. It depends on the timing
22 of the closing up of the gap between the end panel and the
23 door, the end panel and the B pillar. If you close that
24 gap rapidly and smack the forks before they rotate all the
25 way open, you'll stop the movement.

1 Q You're saying -- you're saying if it was smacked
2 suddenly while they're trying to spring open, it may be
3 frozen in an halfway open position; is that right?

4 A Right. Or as in this case, a 90-percent-open
5 position.

6 Q But isn't also the partially open position
7 consistent with bypass or misalignment?

8 A I'm not sure I follow you.

9 Q Isn't the partially open position on the Clayton
10 latch consistent with bypass or alignment -- misalignment?

11 A You mean -- you know, I'm not sure I understand
12 what you're asking me.

13 Q That might be a confusing question because I
14 haven't laid any foundation for it. But let me ask a
15 different question.

16 If the door latch had been unlocked -- or,
17 excuse me, the door latch had been actuated by rod
18 foreshortening, you would expect to find the latch in an
19 unlocked position; is that correct?

20 A Right, you would.

21 Q So the fact that the Clayton latch was found in
22 a locked position is consistent with the door opening from
23 overload?

24 A I don't think so, because the whole frame -- in
25 particular the intermittent lever is smashed and bent.

1 And that's a consequence of what happened with the door
2 after it came open. So the position of the intermittent
3 lever postaccident could change with very little force.

4 Q Let me ask the question a different way. The
5 fact that the intermittent lever was still in a locked
6 position would be inconsistent with inside compression rod
7 activation?

8 A If it looked like this, I would agree with you.
9 But it doesn't. It looks like this. I don't think it's
10 inconsistent, I don't think it's consistent. I don't
11 think it sheds any light on the situation in either case.

12 Q And when you say it looked like this and looked
13 like that, for the record you're just referring to the
14 exemplar latch versus the Clayton latch?

15 A 316 versus 334.

16 Q And I think, if I understand your answer
17 correctly, you're saying that this latch may have changed
18 after the door came open?

19 A I don't think there's any question about it.

20 Q Because some of the levers that move the locking
21 mechanism have been bent by the some of the sheet metal
22 deformation around the frame, right?

23 A They're hugely bent.

24 Q But the inside -- we're talking about the inside,
25 the guts of this latch and this latch frame. The fact

1 that the intermittent lever was in a locked position when
2 you found it is inconsistent with rod compression at the
3 time the door opened?

4 A All the bits that stick out of the latch are
5 connected to the bits that are inside the latch. So, no,
6 I don't think so. I don't think it proves anything one
7 way or the other.

8 Q You can't say, can you, whether or not the
9 intermittent lever was in an unlocked position at the time
10 that the door opened? You can't tell that from looking at
11 that latch?

12 A From looking at the latch, you don't see it now.
13 The latch has been virtually smashed.

14 Q But you agree that it would be in an unlocked
15 position if you had rod foreshortening?

16 A No, I would agree if it were not otherwise
17 damaged like P316. But as it is damaged, I wouldn't
18 agree.

19 Q I want to talk about some of the internal damage
20 on this latch, and you compared it somewhat to the Morris
21 latch. If I understand you correctly, you're saying that
22 the upper fork bolt -- there's two fork bolts; is that
23 right?

24 A Right.

25 Q And those two fork bolts are kind of like V's

Page 222

1 that tend to close around the striker and grip the
 2 striker; is that correct?
 3 A That's their function, yes.
 4 Q And the upper fork bolt won't engage the
 5 detente; is that correct?
 6 A We're speaking of 334?
 7 Q Yes.
 8 A Nothing will move in this latch. It's stuck
 9 where it is because of all the damage to it.
 10 Q And the detente, that's just another word that's
 11 for "stop"; is that correct?
 12 A Yes. It's kind of interchangeable with pawl or
 13 stop or -- yeah.
 14 Q Can you demonstrate for the jury how that
 15 detente and fork bolt interact or engage each other?
 16 A Well, what I've done to P316 is cut away some of
 17 the back of the latch frame so that you can see these
 18 components when they operate. And probably it would be
 19 best if each juror just held it in his hand and operated
 20 it.
 21 But what happens is that there is a land on each
 22 of the forks that is intercepted by what's called the
 23 detail lever from the backside of the latch. And the land
 24 sits on top of the -- or stops the upper fork from
 25 rotating. And there's another one at the bottom that

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1 stops the lower fork from rotating. When this lever is
 2 pulled backwards it pivots something like my arm is
 3 pivoting here. The forks are then free to spring open.
 4 They're spring loaded to the open position.
 5 Q So the fork bolt and detente are metal that are
 6 about the same thickness; is that right?
 7 A Roughly, yes.
 8 Q And the area where they contact each other, you
 9 call that the landing?
 10 A The area on the fork would be a landing or pawl,
 11 p-a-w-l.
 12 Q And they're basically comprised of the same
 13 metal?
 14 A You know, they're both steel, yeah.
 15 Q And the way that it works is kind of like a
 16 ratchet; is that right?
 17 A That's another term that Ford uses for these
 18 parts is, yes, it's a ratchet.
 19 Q I'm not using it in a technical term, I'm using
 20 it kind of as term that we can understand. It's like a
 21 ratchet that has like a jagged edge on metal that can grip
 22 another piece of metal edge?
 23 A Right. It allows rotation in only one
 24 direction.
 25 Q And the way that the fork bolt releases, is that

Page 224

1 the detente is moved out of the way and the fork bolt
 2 springs; is that correct?
 3 A That's the normal way the latch functions. The
 4 fork and the detente lever are in the same plain, and that
 5 would be the normal load of release.
 6 Q And the fork bolts are spring loaded so that if
 7 a detente is not holding the fork bolt, it will spring
 8 open; is that right?
 9 A Right. There is one other thing. If the
 10 striker is not in the jaws, because the striker prevents
 11 the rotation of the jaw, too.
 12 Q The door has to move out?
 13 A The door has to move out.
 14 Q Away from the striker?
 15 A That's right.
 16 Q To release the striker?
 17 A Yes.
 18 Q And so if the detente is moved out of the plain
 19 so it's no longer parallel to the fork bolt, then the fork
 20 bolt then can move freely; is that correct?
 21 A That's a failure mode. That is one way that
 22 latches malfunction.
 23 Q It's not necessarily a defect?
 24 A Depends on the circumstances and the loads that
 25 are required to do that.

Page 225

1 Q If you overwhelm the latch by massive forces, it
 2 can become misaligned and allow the fork bolts to move
 3 past the pawl and release; is that correct?
 4 A What you're talking about there is generally the
 5 frame of the latch is somehow bent so that the pivot axes
 6 of these components get out of alignment.
 7 Q Can you demonstrate for the jury, by showing the
 8 exemplar latch, the pivot points that get out of alignment
 9 in order to allow misalignment?
 10 A There are three rivets that are pretty prominent
 11 on the front face of this latch, located here, above what
 12 I call the fish mount, one below it, and then one down in
 13 the lower right-hand corner here. Each one of these is a
 14 pivot axis. This one is a pivot axis for the upper fork,
 15 this one for the lower fork, and this one for the detente
 16 lever. The detente lever moves like this, in and out of
 17 the upper and lower fork pawls.
 18 Q And if those axes of the upper fork bolt and
 19 detente lever rotate because of bending of the latch and
 20 bending of the latch frame, that will allow the fork bolt
 21 to bypass the detente; is that correct?
 22 A That is right.
 23 Q And on the Clayton latch, you would agree that
 24 the latch frame is bent sufficient that the axis of the
 25 upper fork bolt and the detente are out of plain?

1 event that this occurred as the defendants have suggested?
 2 Would it make a differences to what the door would look
 3 like?

4 A No, he's not -- if the vehicle strikes
 5 something, he's going to travel towards the impact
 6 location. If it's directly in front him, the belts will
 7 provide some restraint effect. But as it moves towards
 8 the side, the belts are less and less effective. So he'll
 9 still be able to hit the door and still be able to apply
 10 some force to it.

11 Q So -- I'm sorry, were you finished?

12 A I'm just saying that the lap belt might stop his
 13 hips from going into the door, but the torso belt can't do
 14 much for the upper body, at least in a side impact.

15 Q So whether or not he's belted does not affect
 16 his weight going against the door in that direction?

17 A I don't think it's very -- the belt is very
 18 effective in restraining you in a lateral impact, is what
 19 I'm saying.

20 Q So if the door comes open, whether he's belted
 21 or not, he's exposed to that ground every time the car
 22 goes over?

23 MR. LARSEN: Objection, leading.

24 THE COURT: Sustained.

25 Q (BY MR. EMBLEM) If the door comes open is there

1 protection for the occupant driver in this case from
 2 ground contact?

3 A The primary means of protection for the occupant
 4 is retention inside the vehicle. Keeping the door closed.
 5 If you open the door, you open the occupant to the
 6 possibility of portions of his anatomy going outside the
 7 envelop of the vehicle and either being crushed between
 8 the vehicle and the ground or levered and injury created
 9 in that fashion. And I have a series of photographs of
 10 people who are dead in belts.

11 MR. LARSEN: Objection, facts not in evidence.

12 THE COURT: Let's not proceed in a narrative.
 13 Question and answer is the form. Mr. Emblem, your
 14 question?

15 Q (BY MR. EMBLEM) The question is, then, that the
 16 belt does not provide the occupant protection that the
 17 door does?

18 A The first level of protection or the first step
 19 in occupant protection is that you've got to maintain the
 20 integrity of the body. The container can't break open and
 21 spill its contents.

22 Q The next part, going backwards, had to do with
 23 the latch. I think we covered that quite a bit. Let me
 24 take a look at that. The way the Clayton latch is bent
 25 related to the locking mechanism, is it evident that the

1 ground contact can easily relock that lock after it's been
 2 once opened from foreshortening?

3 A All I really said was that the lever, the
 4 locking lever or the intermittent lever, was in the locked
 5 position. How that translates into the lock actually
 6 being physically locked is indeterminate, because the
 7 whole thing is so mashed up.

8 Q Thank for you clearing that up. Just because
 9 the lock lever is in the locked position doesn't mean it's
 10 locked?

11 A Right.

12 MR. LARSEN: Leading.

13 THE COURT: Sustained.

14 Q (BY MR. EMBLEM) If it were locked, would the
 15 detentes or detente -- I forgot that what word is -- would
 16 be in the pawl, and that's the landing on the jaw?

17 MR. LARSEN: Objection, leading.

18 THE COURT: Sustained.

19 Q (BY MR. EMBLEM) If it were locked, where would
 20 the detente be?

21 A The latch should be closed and the detente lever
 22 would be engaging the lands on the back of the forks.

23 Q And that's not the case?

24 A Right.

25 Q Thank you for that. And you can see that with

1 your naked eye. You don't need a microscope to see that?

2 A No, it's visible.

3 Q What is this ratcheting mechanism? Does that
 4 have anything to do with what we're talking about in this
 5 case?

6 A That's a term that Ford uses to refer to the
 7 lands and the pawls or the detente lever. And a ratchet
 8 is like a toothed mechanical device that rotates in one
 9 direction and won't rotate in the other.

10 Q Does that have anything to do with what's going
 11 on in this case?

12 A It's just -- it's reminiscent of the shape of
 13 the lens on the fork bolts. They're saw-toothed in
 14 appearance. So it's easy for the fork to rotate to the
 15 closed position. But if the detente lever is in the way,
 16 it's hard to rotate to the open position.

17 Q Sounds like something that occurs over and over
 18 again, would that be fair to say?

19 A Yeah. Right.

20 Q As many times a day as you open and close the
 21 door, that's going to happen?

22 A It does.

23 Q So it's something that's subjected to a great
 24 deal of wear?

25 A Well, these particular components are very hard.

Addendum 93



TempestSM
REPORTING

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IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

-O-

DEE CLAYTON, et al.,	:	
Plaintiffs,	:	Case No. 000909522
	:	Judge Joseph C. Fratto
-v-	:	
	:	Deposition of:
UTAH AUTO COLLECTION, et al.,	:	<u>KEITH BARTON</u>
Defendants.	:	

-O-

Place: SNELL & WILMER, LLP
15 West South Temple, #1200
Salt Lake City, Utah 84101

Date: October 29, 2003
2:20 p.m.

Reporter: Ariel Mumma, CSR/RPR

-O-

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2691

1 identical twin sister?

2 A. No, I didn't know that.

3 Q. Do you know if her sister was present?

4 Obviously not?

15:03:01 5 A. No.

6 MR. FAY: You thought it was a mirror.

7 THE WITNESS: That's news to me. I didn't
8 know that.

9 Q. BY MR. LARSEN: And you understood from
15:03:16 10 the information that was provided to you that it was a
11 1998 Ford Explorer that was the vehicle that was
12 involved in the accident?

13 A. Yes, that's correct.

14 Q. Did you have any other information about
15:03:28 15 that vehicle, other than what was described to you by
16 the Claytons and the Highway Patrol report?

17 A. No. I don't believe -- yeah.

18 Q. I'm sorry, I said Claytons. I meant
19 Montoyas, and I believe her mother's name is Martinez,
15:03:51 20 so it's confusing, but the question was: Did you have
21 any other information about the vehicle.

22 A. No.

23 Q. Do you know if there was an inspection of
24 the vehicle performed by your office?

15:04:06 25 A. There was not an inspection of the vehicle

1 by our office.

2 Q. On Page 6, which is under Item 8, there's
3 a list of descriptions, the parts of the body on
4 Kellie that were injured.

15:04:27 5 A. Uh-huh.

6 Q. Is that again your handwriting?

7 A. It is.

8 Q. And are those descriptions accurate as to
9 what Kellie told you that day?

15:04:39 10 A. No.

11 Q. What's not accurate?

12 A. There was -- there was really too much to
13 list. I mean, what I needed -- I just told her that
14 what I really needed to do was get the medical bills
15 and records, so --

15:04:52

16 Q. So these are just the basic injuries, but
17 there were more described to you that was too
18 excessive to list?

19 A. Yes. Up under Client Number 1, Part 8, I
20 wrote down the things that were really what I
21 considered to be, I don't know, the major things.

15:05:07

22 Q. And it lists brain injury. Who described
23 that Kellie had a brain injury from this accident?

24 A. It would have had to have been either
25 Kellie or her parents.

15:05:29

Addendum 94

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

DONALD S. TANDY, P.E.

February 8, 2007
9:08 a.m.

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By Bn SALT LAKE COUNTY
Deputy Clerk

Wendy Alcock
Registered Professional Reporter



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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF:

DONALD S. TANDY, P.E.

VOLUME II

February 8, 2007
9:08 a.m.

Wendy Alcock
Registered Professional Reporter

1 A It does.
 2 Q Does a higher center of gravity make a vehicle
 3 more likely to roll over than a lower center of gravity?
 4 A No, because it depends on other things.
 5 Q Does the center of gravity related to the track
 6 width -- if the ratio is lower, in other words, like 1.06,
 7 it's not as safe as if the number was higher, like 1.13?
 8 A I don't agree.
 9 Q And that's because of the other factors you've
 10 talked about?
 11 A Correct.
 12 Q And since you left Ford you've been testifying
 13 to defend Ford. During the years that you told the jury
 14 about yesterday they've paid you \$20 million?
 15 A I believe I've seen numbers in that range in the
 16 cases that I've testified in.
 17 Q And you are the person responsible for signing
 18 off this UN105 Explorer?
 19 A No, I'm one of the many people.
 20 Q But you signed it off for the static stability,
 21 for the dynamic stability?
 22 A No, I didn't sign off for static stability. The
 23 dynamics had to do with the ride and handling group, had
 24 to do with my group, different groups.
 25 Q You signed the certification that was the

1 resistance to rollover?
 2 A For the ADAMS simulation, yes.
 3 Q If you increase the center of gravity -- if you
 4 raise the center of gravity in Mr. Clayton's Explorer,
 5 does that make the Explorer more likely to roll over?
 6 A No.
 7 MR. EMBLEM: I don't think I have anything
 8 further.
 9 THE COURT: Further direct, Mr. O'Neill?
 10 MR. O'NEILL: Yes, Your Honor. Thank you.
 11 REDIRECT EXAMINATION
 12 BY MR. O'NEILL:
 13 Q Mr. Tandy, very briefly let's go back to the
 14 1997 Explorer with the P235 tires and with Mr. Clayton in
 15 the vehicle, who we know was 240 pounds, we think. And
 16 Ms. Montoya, you've seen her, I don't know how to really
 17 estimate weight. Did you, sir, test that vehicle with
 18 those tires, more loaded, further above the center of
 19 gravity than that?
 20 A Oh, no question.
 21 Q Any problems on the test track?
 22 A No problem.
 23 Q Any problems on the test track with bigger
 24 tires?
 25 A No, sir. We tested smaller tires and bigger

1 tires.
 2 Q Remember that diagram of the car and the center
 3 of gravity and the wheels doing this?
 4 A Yes.
 5 Q Were they doing that on your vehicle when you
 6 were on the test track?
 7 A Doing whatever the vehicle does. You can't
 8 really measure the migration of the center of gravity, but
 9 where it was moving, it was moving. And we recorded the
 10 data that showed the vehicle still performed well.
 11 Q Any two-wheel lift, sir?
 12 A No, sir.
 13 Q You were asked some questions about some rating
 14 or measurement that NHTSA promulgates. Do you recall
 15 those questions?
 16 A Yes.
 17 Q Let me show you what's marked as Defendant's
 18 Exhibit D177.
 19 MR. EMBLEM: A new document or one that's
 20 already in?
 21 MR. O'NEILL: It's not in evidence. It's
 22 Defendant's D177.
 23 MR. EMBLEM: Your Honor, we'd object to this
 24 document as hearsay.
 25 MR. O'NEILL: Your Honor, can I attempt to lay

1 foundation?
 2 THE COURT: I think we would need that first,
 3 and then I'll entertain the objection. Mr. O'Neill?
 4 Q (BY MR. O'NEILL) Let me hand you this document,
 5 sir. And, again, without reading from it, Mr. Tandy, do
 6 you understand that the issue of static static stability
 7 factor as a definition of a standard for resistance to
 8 rollover was studied by the federal government?
 9 A Studied and rejected.
 10 Q And when did they reject it, sir?
 11 A Back in 1987.
 12 Q And what was the reason why they rejected static
 13 stability factor?
 14 A They said that it doesn't take into account
 15 other important considerations like the suspension,
 16 chassis, tires, suspension characteristics, springs and
 17 shocks. Other things that are important.
 18 Q Is that kind of what you've been saying for the
 19 last day-and-a-half or so?
 20 A Yes, sir.
 21 Q And is that why Ford doesn't rely on the magic
 22 number of the static stability factor, but instead looks
 23 at the whole vehicle?
 24 A Ford and other manufacturers.
 25 Q And when Ford looks at the whole vehicle and

Addendum 95

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,)	
)	Case No. 000909522
Plaintiffs,)	
)	
vs.)	
)	Judge Joseph C. Fratto
UTAH AUTO COLLECTION,)	
et al.,)	
)	
Defendants.)	

TRIAL TESTIMONY OF DAVID INGEBRETSEN

January 25, 2007

1 these ones at around 1.01, that stability factor has
 2 been grossly overestimated. The dynamic stability
 3 factor would put that lower. I would expect most, if
 4 not all of these vehicles, could probably roll over in
 5 an emergency maneuver at freeway speeds. So --
 6 Q. Is that answer yes, sir?
 7 A. They're dangerous at freeway speeds.
 8 Q. Is that answer yes?
 9 A. I just said that they're dangerous at freeway
 10 speeds.
 11 Q. Yes or no, sir. Are every one of those
 12 vehicles defective above the Ford Explorer red line on
 13 Defendant's Exhibit 5-A, yes or no?
 14 A. They're unstable.
 15 Q. Is the answer yes or no, defective?
 16 A. Def -- defective in that they are unstable,
 17 yes.
 18 Q. Is that a yes?
 19 A. Yes.
 20 Q. Okay. Thank you, sir. Mr. Ingebretsen, have
 21 you done analysis to determine the relative severity
 22 of this rollover compared to national accident
 23 statistics?
 24 A. You know, I've looked at all those data. And
 25 there are so many ways to interpret them. I've seen

1 those numbers. This was a very severe accident.
 2 Q. Part of your general research was looking at
 3 the relative severity of this rollover to examine the
 4 survivability of Mr. Clayton. Isn't that true, sir?
 5 A. That's true.
 6 Q. And based upon that analysis you determined
 7 that the severity of this accident was "out there on
 8 the edge," right?
 9 A. If you're quoting me, I may have said that.
 10 You'll probably show me. But yeah, it's, it is --
 11 rollovers account for 40 percent of all, all deaths.
 12 And the more severe the rollover, the more quarter
 13 turns, the more severe it is, the more likely one will
 14 be ejected and killed.
 15 Q. And this one is out there on the edge,
 16 statistically speaking, in your opinion?
 17 A. It's probably in the, what? Two or three
 18 percent of rollovers.
 19 Q. Worst?
 20 A. Yes.
 21 Q. Okay. And most rollover accidents are not
 22 this severe, in your opinion?
 23 A. That's correct.
 24 Q. Okay.
 25 A. And the fatalities occur in the most severe

1 ones.
 2 Q. Okay. And sir, let me show you what has been
 3 marked as Defendant's Exhibit 457.
 4 MR. O'NEILL: Your Honor, may I approach?
 5 THE COURT: You may.
 6 Q. (By Mr. O'Neill) And Mr. Ingebretsen, did
 7 you have an occasion to review these materials
 8 produced by Dr. Germane in this case?
 9 A. I did. And also the SAE paper where this
 10 particular craft came from.
 11 Q. And is this the type of statistical
 12 information consulted by experts in your field
 13 concerning accident severity and frequency?
 14 A. It's among the body, yeah.
 15 Q. Okay.
 16 MR. O'NEILL: Your Honor, I move Defendant's
 17 Exhibit 457.
 18 THE COURT: Any objection?
 19 MR. EMBLEM: No objection.
 20 THE COURT: Four fifty-seven is received.
 21 (Defendant Exhibit No. 457 was received.)
 22 Q. (By Mr. O'Neill) Mr. Ingebretsen, displaying
 23 Exhibit 457. Let's take a moment to just discuss this
 24 chart, if we can. And just to begin with, the top of
 25 the page says: "Light Vehicle Rollover Frequency For

1 a Six-Year Period of 1995 to 2001, National
 2 Association of Sampling -- National Automotive
 3 Sampling Statistics." Is that what "NASS" means?
 4 A. That sounds right.
 5 Q. Okay. And then this graph plots, on the
 6 vertical margin, percent. And -- or axis, I'm sorry.
 7 And then on the horizontal axis, rollover by quarter
 8 turn. Correct?
 9 A. Correct.
 10 Q. And is the right way to read this graph that
 11 at one quarter turn, which means just, in our case,
 12 the vehicle going just up on that one passenger side
 13 and stopping. That's a quarter-turn accident.
 14 A. Is that a question?
 15 Q. Is that, is that the right way to understand
 16 this?
 17 A. The graph, or what you're demonstrating?
 18 Q. What I just demonstrated. Is this --
 19 A. That's one quarter turn.
 20 Q. Okay. And so if the vehicle came to a stop
 21 on the passenger side, that would show up in this
 22 chart as a one-quarter roll accident?
 23 A. That's correct.
 24 Q. Okay. And so this database then for this
 25 six-year period of light vehicle rollovers then charts

1 Q. Okay. And then we won't go two and three.
 2 Let's just go right to four, 16 quarter rolls. What
 3 does the graph show in terms of fatalities?
 4 A. We're approaching a hundred percent of all of
 5 them have been accumulated by that point.
 6 Q. Okay. And does this graph show, then, that
 7 the more rolls that occur, the more quarter rolls, the
 8 more fatalities that occur?
 9 A. I wouldn't expect anything else.
 10 Q. Okay.
 11 A. I mean, we're accumulating all the rollovers.
 12 By the time we get to the end we should have all the
 13 injuries that have been reported.
 14 Q. Okay. That's fine.
 15 MR. O'NEILL: May I approach, your Honor?
 16 THE COURT: You may.
 17 THE WITNESS: Thank you.
 18 Q. (By Mr. O'Neill) Mr. Ingebretsen, have you
 19 seen this data and chart as part of your work in this
 20 case for Ms. Corrigan?
 21 A. I don't think I have this really nice-colored
 22 graph. I remember her talking about these in her
 23 report.
 24 THE COURT: This is 437?
 25 MR. O'NEILL: Yes, your Honor: Your Honor, I

1 believe it's 437-2 on our exhibit list.
 2 Q. (By Mr. O'Neill) And are you familiar, then,
 3 with the data that is reflected in that chart, based
 4 upon your review of Ms. Corrigan's materials?
 5 A. Yes, I am.
 6 Q. And is this the type of information that is
 7 consulted by experts in your field?
 8 A. Well, where she -- well, I mean, yes. But
 9 the presentation I think is misleading. But, I mean,
 10 the database -- this is that NASS database. I mean,
 11 that's the body of information we go to. And it's
 12 presentation that can be massaged. And so --
 13 Q. Okay.
 14 A. -- I mean, yes, the -- where she got it from,
 15 yes, that's the body.
 16 MR. O'NEILL: Your Honor, I offer
 17 Exhibit 437-2 into evidence.
 18 THE COURT: Any objection?
 19 MR. EMBLEM: Object to the exhibit, your
 20 Honor. Actually, there is no foundation for the
 21 contents of this. It's not self-authenticating. And
 22 there's no testimony in terms of how it's relating.
 23 THE COURT: In terms of your -- the objection
 24 is overruled. The -- 437-2 is received.
 25 (Defendant Exhibit No. 437-2 was received.)

1 MR. O'NEILL: And displaying 437-2.
 2 Q. (By Mr. O'Neill) Let's review the, the
 3 statistics, Mr. Ingebretsen. And again, this is
 4 entitled: "Risk of Ejection to Occupants in Rollovers
 5 With No Door Opening," correct?
 6 A. That's correct.
 7 Q. And you see, on the bottom, the source.
 8 Again we're back to the NASS Light Passenger Vehicle
 9 Database?
 10 A. That's correct.
 11 Q. Okay. And in this graph the data shows that
 12 there's an 80-percent risk of rejection to occupants
 13 with no door opening in accidents with three or more
 14 rolls. Is that true?
 15 A. You said "rejection," did you mean
 16 "ejection"?
 17 Q. Let me rephrase. And I apologize.
 18 A. Okay.
 19 Q. Is it proper to understand the data displayed
 20 in Exhibit 437 that the risk of ejection is 86 percent
 21 in accidents involving three or more rolls with no
 22 door opening?
 23 A. I think that's right. But it makes a false
 24 implication that ejection equates to fatal injuries.
 25 That -- for ejection only, if we, if we ignore what

1 the injuries are, then yes, we can, we can use this.
 2 Q. And that's -- I appreciate what you are
 3 saying, and I don't want to make you assume anything.
 4 A. Okay.
 5 Q. We're talking strictly of the risk of
 6 ejection.
 7 A. Correct.
 8 Q. Irrespective of what happens once you get
 9 ejected.
 10 A. Correct.
 11 Q. And doesn't this graph show, 437-2, that you
 12 have an 86-percent chance of ejection with no door
 13 opening in accidents that involve three or more rolls?
 14 A. This is -- if I assume that -- I believe this
 15 is an exponent data. And I wasn't there, and I don't
 16 recall reading a paper of how they collected it or
 17 what they're doing. That's what this graph shows.
 18 Q. Okay.
 19 A. But I, I haven't been able to confirm this
 20 against an independent, unbiased source.
 21 Q. Do you have any current information from your
 22 own work in this case that somehow this risk, 80
 23 per -- 86 percent is wrong?
 24 A. No, I don't.
 25 Q. Okay.

Addendum 96

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Attorneys for Ford Motor Company

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NR

**IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH**

DEE CLAYTON, et al.,
Plaintiffs,

v.

UTAH AUTO COLLECTION, et al.,
Defendants.

**MOTION TO STRIKE PORTIONS OF
PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION FOR NEW TRIAL**

ORAL ARGUMENT REQUESTED

Case No. 000909522

Judge Joseph C. Fratto

Pursuant to Utah Rules of Civil Procedure 7(b) and 12(f), Defendant Ford Motor Company ("Ford"), through counsel, moves to strike portions of Plaintiffs' Reply Memorandum of Points & Authorities in Support of Plaintiffs' Motion for Judgment Notwithstanding the Verdict and Motion of New Trial. Specifically, Ford moves to strike the unsupported statements on pages 2 through 8 suggesting that Ford's expert, Edward Caulfield from Packer Engineering, "tampered with" or "manipulated" the subject door latch to perpetrate a "fraud" to fit Ford's defense. The bases for this motion are that the statements are: (1) impertinent and scandalous material; (2) unsupported by the testimony and evidence in the trial record; and (3) contradicted by the trial testimony of plaintiffs' door latch expert Andrew Gilberg.

This motion is supported by an accompanying memorandum of law.

DATED this 2nd day of May, 2007.

Snell & Wilmer L.L.P.



Dan R. Larsen
Attorneys for Ford Motor Company

CERTIFICATE OF SERVICE

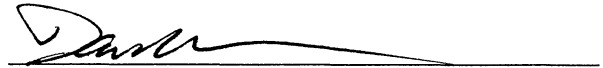
I certify that on this 2nd day of May, 2007, a true and correct copy of the foregoing

MOTION TO STRIKE PORTIONS OF PLAINTIFFS' REPLY BRIEF IN SUPPORT OF

MOTION FOR NEW TRIAL was served via email and U.S. mail, postage prepaid to:

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Attorneys for Ford Motor Company

FILED
CLERK OF DISTRICT COURT
6, MAY -2 PM 4:10

RECEIVED
JUN 11 2001
CLERK OF DISTRICT COURT

**IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH**

DEE CLAYTON, et al.,

Plaintiffs,

v.

UTAH AUTO COLLECTION, et al.,

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PORTIONS OF
PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION FOR NEW TRIAL**

ORAL ARGUMENT REQUESTED

Case No. 000909522

Judge Joseph C. Fratto

Pursuant to Utah Rules of Civil Procedure 7(c), Defendant Ford Motor Company ("Ford"), through counsel, respectfully submits this Memorandum in Support of Motion to Strike Portions of Plaintiffs' Reply Brief in Support of Motion for New Trial.

ARGUMENT

**IMPERTINENT, SCANDALOUS AND UNSUPPORTED STATEMENTS IN
PLAINTIFFS' REPLY BRIEF SHOULD BE STRICKEN**

Pursuant to Rule 12(f), "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Utah R. Civ. P. 12(f). Consistent with this rule, the Utah Supreme Court has held that scandalous, malicious, and impertinent allegations may be stricken from a court's files and records. See Morrison v. Snow,

26 Utah 247, 72 P. 924 (1903)(where the record shows that no evidence was introduced, nor was any offered, to support scandalous, malicious and impertinent allegations, trial court properly struck allegations from its files and records). Peters v. Pine Meadow Ranch Home Ass'n, 151 P.3d 962 (Utah 2007) (appellate briefs containing irrelevant and scandalous accusations, both direct and indirect, that the Court of Appeals panel intentionally fabricated evidence, intentionally misstated the holding of a case, and acted with improper motives, are properly stricken).

In addition, the Utah Standards of Professionalism and Civility direct counsel to observe appropriate standards in their briefing. Paragraph 3 of these standards provides as follows:

Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

See Utah Standards of Professionalism and Civility, at ¶ 3.

Here, plaintiffs' reply memorandum crosses the line from zealous advocacy to an improper and unsupported attack on Ford Motor Company, its counsel and its testifying expert. Among other things, plaintiffs boldly state that "Packer Engineering tampered with the evidence", that the photographic evidence offered at trial was "fraudulent handy-work of Packer Engineering", that "Packer Engineering adjusted the fork bolts on the Clayton door latch to match its newly produced version proffered by Mr. Caulfield on how the latch opened", that "Packer Engineering further manipulated the latch to 'adjust' it to a fixed position to fit Ford's defense", that the fork bolt misalignment is "due to Packer Engineering's manipulation of the evidence," that "the only reason for Packer Engineering to remove the door latch was to manipulate it", and that the evidence was a "fraud perpetrated by Packer Engineering who

tampered with the latch and left it jammed in a partially closed position....” (Plaintiffs’ reply brief at pp. 2-5, 8)

While the Court and the parties can certainly appreciate zealous advocacy, plaintiffs’ memorandum crosses the line when it accuses attorneys and witnesses of evidence tampering and fraud on the Court. Plaintiffs’ allegations are extremely serious and are the type of unsupported accusations of improper conduct addressed by Paragraph 3 of the Utah Standards of Professionalism and Civility. If plaintiffs truly believed at trial that Dr. Caulfield, or Ford’s counsel, engaged in unethical conduct, they should have raised these issues before or during trial, not afterwards in a desperate attempt to overturn an adverse jury verdict.

It is important to note that plaintiffs’ reply memorandum grossly misstates the trial record. Plaintiffs had custody of the subject latch at the time of trial and offered it into evidence as plaintiffs’ Exhibit 334. At no time during plaintiffs’ case-in-chief did they ever suggest that the subject door latch had been improperly modified, manipulated, tampered with or fraudulently damaged. In fact, Mr. Gilberg candidly testified at trial that the latch was basically in the same condition both at his inspection and at trial.¹ Robust cross-examination of Dr. Caulfield simply demonstrated that the latch had been photographed many times by numerous experts over the years. It also demonstrated that the exact position of the fork bolts following the accident could not be precisely determined. Even plaintiffs’ reply brief now concedes that Mr. Gilberg “adjusted” the fork bolts to photographically record the maximum fork bolt travel, but “returned the fork bolts to position he found them in.”² (Plaintiff’s reply memo at p. 2). In any event, none of the trial testimony or exhibits suggest tampering with the subject door latch by Dr. Caulfield or Packer Engineering, much less demonstrate fraudulent conduct.

¹ See Exhibit 3 attached to Ford’s Memorandum in Opposition to Plaintiffs’ Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, Gilberg testimony transcript at pp. 217-18.

² Plaintiffs cite no record evidence to support their assertion that Mr. Gilberg adjusted and then returned the fork bolts to the position he found them in. It simply never came up at trial.

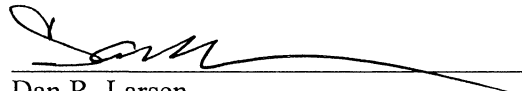
In short, Ford believes that plaintiffs' unsupported allegations and personal attacks have no bearing on the motion for new trial and respectfully request that the Court strike the challenged portions of the reply memorandum.

CONCLUSION

Based upon the above arguments, Defendant Ford Motor Company respectfully requests that this Court grant its Motion to Strike Portions of Plaintiffs' Reply Brief in Support of Motion for New Trial.

DATED this 22nd day of May, 2007.

Snell & Wilmer L.L.P.



Dan R. Larsen
Attorneys for Ford Motor Company

Addendum 97

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Attorneys for Ford Motor Company

FILED DISTRICT COURT
Third Judicial District
JUL - 6 2007
SALT LAKE COUNTY
Deputy Clerk

**IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH**

DEE CLAYTON, et al.,

Appellants/Plaintiffs,

v.

UTAH AUTO COLLECTION, et al.,

Appellees/Defendants.

NOTICE OF CROSS APPEAL

Trial Court Case No. 000909522

Utah Supreme Court Case No. 20070517

Judge Joseph C. Fratto


Pursuant to Rules 3 and 4(d) of the Utah Rules of Appellate Procedure, Notice is hereby given that Ford Motor Company, through counsel, cross-appeals to the Utah Supreme Court the final judgment of the Honorable Joseph C. Fratto entered in this matter on July 3, 2007. Because final judgment was entered on July 3, 2007, pursuant to Rule 4(c) of the Utah Rules of Appellate Procedure, the Appellants' Notice of Appeal dated June 25, 2007, is treated as filed as of July 3, 2007. This cross appeal is filed within the 14-days of the filing of Appellants' Notice of Appeal, and therefore, complies with Rule 4(d) of the Utah Rules of Appellate Procedure.

This cross appeal is taken from that part of the judgment pertaining to whether Appellant Kellie Montoya filed this lawsuit within the applicable statute of limitations period. Specifically, Ford Motor Company appeals the Court's denial of its motion for directed verdict on January 30,

2007, and the subsequent jury findings in the special verdict relevant to the statute of limitations.

DATED this 6th day of July, 2007.

Snell & Wilmer L.L.P.



Troy L. Booher
Attorney for Ford Motor Company

...

Addendum 98

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

ESTATE OF ANTHONY CLAYTON Et
al, : MINUTES
Plaintiff, : JURY TRIAL DAY 16,
 :
 :
vs. : Case No: 000909522 WD
 :
JOHN DOES 1 THROUGH X Et al, : Judge: JOSEPH C. FRATTO
Defendant. : Date: January 30, 2007

Clerk: wendyd
Reporter: CATHI KENNEDY

PRESENT

Plaintiff(s): DEE CLAYTON
FRED CLAYTON
Plaintiff's Attorney(s): THOR O EMBLEM
TRACY L EMBLEM
MATTHEW H RATY
Defendant's Attorney(s): DAN R LARSEN
KIMBERLY A NEVILLE
TIMOTHY G O'NEILL
Other Parties: KELLIE MONTOYA
CAT/CIC
Tape Number: Courtrm N41 Tape Count: 8:45

TRIAL

On Record
Official record taken by Depomax.
The Court states it's decision on defendant's motion for directed
verdict.
The motion is granted in part and denied in part.
The motion is granted as to the issue(s) of inadequate roof
cushioning; the exterior handle; defective seat belt; fraud;
dealerships; and negligent repair.
All other issues are denied.
9:07 The plaintiff has opted to not re-open their case and call

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

ESTATE OF ANTHONY CLAYTON Et
al, : MINUTES
Plaintiff, : JURY TRIAL DAY 21
:
:
vs. : Case No: 000909522 WD
:
JOHN DOES 1 THROUGH X Et al, : Judge: JOSEPH C. FRATTO
Defendant. : Date: February 7, 2007

Clerk: wendyd
Reporter: CATHI KENNEDY

PRESENT

Plaintiff(s): DEE CLAYTON
FRED CLAYTON
Plaintiff's Attorney(s): THOR O EMBLEM
Defendant's Attorney(s): DAN R LARSEN
KIMBERLY A NEVILLE
TIMOTHY G O'NEILL
Other Parties: KELLIE MONTOYA
CAT/CIC
Tape Number: Courtrm N41 Tape Count: 9:15

TRIAL

TAPE: Courtrm N41 COUNT: 9:15
On Record
OFFICIAL RECORD TAKEN BY DEPOMAX
Defendant's witness ANDREW TONELLI resumes the stand on direct
examination.
9:46 Defendant's witness MICHAEL JAMES is sworn and testifies.
11:34 Defendant's witness DONALD TANDY is sworn and tesitifies.
12:00 noon recess
Clerk asked plaintiff's counsel assistant for the missing CD/DVD
copies and was informed that 266B was a corrupted file and the rest
would be handed in tomorrow morning.
1:43 Back in session

Addendum 99

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
 UTAH AUTO COLLECTION,)
 et al.,)
)
 Defendants.)

TAKEN AT: SCOTT MATHESON COURTHOUSE
450 South State
Salt Lake City, Utah

DATE: Friday, February 9, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR

By bn SALT LAKE COUNTY
Deputy Clerk



TOLL FREE 800-337-6629
PHONE 801-328-1188
FAX 801-328-1189

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
UTAH AUTO COLLECTION,)
et al.,)
)
 Defendants.)

JURY INSTRUCTIONS
AND PLAINTIFFS' CLOSING ARGUMENT

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Friday, February 9, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR

1 and determine this case the same as if it were
2 between individuals. You should look solely to the
3 evidence for the facts and to the instructions I give
4 you for the law and return a true and just verdict
5 according to the facts established by the evidence
6 and the law as I have stated it to you.

7 Instruction 8: You are the exclusive
8 judges of the credibility of the witnesses and the
9 weight of the evidence. In judging the weight of the
10 testimony and credibility of the witnesses, you have
11 a right to take into consideration any biases, any
12 interest in the result, and any motive or lack of
13 motive to testify fairly. You may consider the
14 witnesses' conduct while testifying before you, the
15 reasonableness of their statements, their apparent
16 frankness or candor, or want of it, their opportunity
17 to know, their ability to understand, and their
18 capacity to remember. You should consider these
19 matters you believe have a bearing on the
20 truthfulness or accuracy -- the truthfulness and
21 accuracy of the witnesses' statements.

2 Instruction 9: You may believe that a
3 witness, on some former occasion, made statements
4 inconsistent with that witness's testimony given here
5 in this case.

1 That does not necessarily mean that you
2 are required to entirely disregard the present
3 testimony. The effect of such evidence upon the
4 credibility of the witness is for you to determine.

5 No. 10: If you believe any witness has
6 willfully testified falsely as to any material
7 matter, you may disregard the entire testimony of
8 that witness, except as that witness may have been
9 corroborated by other credible evidence.

10 Instruction No. 11: In the present
11 action, certain testimony has been read or shown to
12 you by way of deposition. You are not to discount
13 this testimony for the sole reason that it comes to
14 you in the form of a deposition. It is entitled to
15 the same consideration as if the witness had
16 personally appeared.

17 Instruction No. 12: An opinion is the
18 expression of a conclusion or judgment which does not
19 purport to be based on actual knowledge. In
20 determining whether a particular statement was a
21 statement of fact or merely an expression of opinion,
22 you may consider the surrounding circumstances under
23 which the statement was made and the ordinary effect
24 of the words used. You may also consider the
25 relationship of the parties and the subject matter

1 with which the statement was concerned.

2 Instruction No. 13: The rules of
3 evidence ordinarily do not permit the opinions of
4 witnesses to be received as evidence. An exception
5 to this rule exists in the case of expert witnesses.
6 Witnesses who, by education, study, and experience --
7 pardon me -- have become expert in some art, science,
8 profession, or calling, may state opinions as to any
9 such matter in which that witness is qualified as an
10 expert, so long as it is material and relevant to the
11 case.

12 You should consider such expert opinion
13 and the reasons, if any, given for it. You are not
14 bound by such an opinion. Give it the weight you
15 think it deserves. If you should decide that the
16 opinions of an expert witness are not based upon
17 sufficient education and experience or if you should
18 conclude that the reasons given in support of the
19 opinions are not sound or that such opinions are
20 outweighed by other evidence, you may disregard the
21 opinion entirely.

22 Instruction No. 14: Certain charts and
23 summaries have been shown to you in order to help
24 explain the facts disclosed by the books, records,
25 and other documents which are in evidence in the

1 case. However, such charts or summaries are not in
2 and of themselves evidence or proof of any facts. If
3 such charts or summaries do not correctly reflect
4 facts or figures shown by the evidence in the case,
5 you should disregard them.

6 Instruction No. 15: Whenever in these
7 instructions it is stated that the burden of proof
8 rests upon a certain party or that a party must prove
9 a certain proposition or that you must find a certain
10 proposition to be true, I mean that unless the truth
11 of the allegation is proved by a preponderance of the
12 evidence, you shall find that the same is not true.

13 Instruction No. 16: I have noticed that
14 some of you have been taking notes during the
15 testimony. The use of notes in the jury room to
16 refresh your memory is perfectly acceptable, but let
17 me caution you not to rely excessively upon your
18 notes. You must arrive at a verdict independently,
19 after consultation with the other jurors, and each of
20 you must rely on your own memory of the evidence.
21 One juror's opinion should not be given excessive
22 consideration solely because that juror has taken
23 notes.

24 No. 17: A fact must be proved -- or a
25 fact may be proved by circumstantial evidence.

Addendum 100

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
 UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

TOLL FREE 800-337-6629
PHONE 801-328-1188
FAX 801-328-1189

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,))
)
 Defendants.)

TRIAL TESTIMONY OF:

EDWARD CAULFIELD

February 1, 2007
9:00 a.m.

Wendy Alcock
Registered Professional Reporter

1 exhibits.
 2 MR. EMBLEM: Five forty-two-A and 542-B, as
 3 in "Baker."
 4 THE COURT: But P or D?
 5 MR. EMBLEM: Oh, plaintiffs.
 6 THE COURT: Plaintiffs. Thank you.
 7 MR. LARSEN: Your Honor, I object to counsel
 8 stating what the exhibit is and any mention of the
 9 exhibit before it's been offered and received into
 10 evidence.
 11 THE COURT: Sustained.
 12 Q. (By Mr. Emblem) Do you recognize the
 13 photographs as being photographs of the Clayton
 14 vehicle?
 15 A. They look like the Clayton vehicle.
 16 Q. Isn't the Clayton vehicle quite distinctive
 17 to your knowledge now?
 18 A. Yes.
 19 Q. They're Clayton photographs, aren't they?
 20 A. That's what I said.
 21 MR. EMBLEM: Your Honor, we'd move Exhibits
 22 542-A and 542-B.
 23 THE COURT: And if you would premise it so
 24 that we're clear in the record here. It's P-541 and
 25 5 -- P-542. Any objection?

1 MR. EMBLEM: Well, it would be a correction,
 2 your Honor.
 3 MR. LARSEN: Yes, objection. Foundation for
 4 this witness.
 5 MR. EMBLEM: Five forty-two-A and 542-B.
 6 THE COURT: Five -- P-542-A and P-542-B?
 7 MR. EMBLEM: B. Thank you.
 8 THE COURT: And there is an objection,
 9 foundation. Objection is sustained.
 10 MR. EMBLEM: Okay. May I approach?
 11 THE COURT: No. I think we'll have your next
 12 question, Mr. Emblem, please.
 13 MR. EMBLEM: Okay.
 14 Q. (By Mr. Emblem) I'm gonna show you some
 15 further photographs. Ask you if you can tell what
 16 these photographs -- these are Plaintiffs
 17 Exhibit 490. One page of photographs. Can you
 18 recognize the photographs as being of the Clayton
 19 vehicle?
 20 A. I recognize the Clayton vehicle in the
 21 photograph.
 22 Q. Right. And do you recognize that the --
 23 A. Excuse me.
 24 Q. -- vehicle contains -- the photograph
 25 contains a picture of the door latch, which is the

1 subject of your testimony?
 2 A. Yes.
 3 Q. Okay.
 4 MR. EMBLEM: Your Honor, defendants move
 5 Exhibit 490.
 6 MR. LARSEN: Same objection.
 7 THE COURT: Overruled. Four ninety -- P-490
 8 is received.
 9 (Plaintiff Exhibit No. 490 was received.)
 10 Q. (By Mr. Emblem) I'm gonna show you --
 11 MR. EMBLEM: I'd like to display that. Let
 12 me see that. Can we put 490 up on the overhead,
 13 please? Can we have some lights? Thank you very
 14 much.
 15 Q. (By Mr. Emblem) Okay. This is a photograph
 16 identified in the upper right corner --
 17 MR. EMBLEM: Would you please show me the
 18 upper right corner?
 19 OLAV EMBLEM: Or left?
 20 MR. EMBLEM: Upper right corner. The
 21 identification. Right there.
 22 Q. (By Mr. Emblem) Germane Engineering,
 23 June 11, 2002?
 24 A. Correct.
 25 Q. Okay.

1 MR. EMBLEM: Now please show me the door
 2 latch. Okay, stop there.
 3 Q. (By Mr. Emblem) Is that door latch open?
 4 A. That door latch, those forks are moved into
 5 the fully-opened position.
 6 Q. They're fully open?
 7 A. They're fully open in that picture.
 8 Q. Okay. All right.
 9 MR. EMBLEM: Lights, please.
 10 Q. (By Mr. Emblem) I'm gonna show you exhibits
 11 that are marked as 304-A through G, and ask you if you
 12 can -- if you recognize those photographs as being
 13 photographs taken of the Clayton door parts, including
 14 the latch, in the interior door panel?
 15 A. I haven't seen these photos before, but they
 16 look like parts from the Clayton vehicle from the
 17 pictures.
 18 Q. And you recognize the parts of the Clayton
 19 vehicle because you -- it was the subject of your
 20 investigation, correct?
 21 A. Correct.
 22 MR. EMBLEM: Your Honor, plaintiffs would
 23 move Exhibits 304-A through G.
 24 THE COURT: Any objection?
 25 MR. LARSEN: Yes, foundation.

1 MR. EMBLEM: May I have that, please? Three
 2 oh four-B?
 3 Q. (By Mr. Emblem) These photographs are
 4 identified as taken by Ms. Corrigan on 11 --
 5 November 7, 1902 -- or 2002. Is that door latch open?
 6 A. The door latch is open. And that's almost
 7 fully opened. The bottom is not fully descended.
 8 Q. And -- okay. I'm gonna show you 304-C.
 9 MR. EMBLEM: Three oh four-C, please.
 10 Q. (By Mr. Emblem) In that -- in 304-C we see
 11 this alignment right here. Is that another way to
 12 tell that the latch is fully open, because the
 13 underside of the fork bolts come up and line with
 14 themselves?
 15 A. That latch in that picture is almost fully
 16 open. The later picture that she took in the same
 17 sequence shows that the bottom latch is not all the
 18 way fully open. The last picture.
 19 Q. Let me show you 304-D. And 304-D we're still
 20 looking right into the latch, aren't we?
 21 A. Correct.
 22 Q. And the two -- underside, this is the part of
 23 the latch that grabs the lock -- latch pin and the
 24 bolt?
 25 A. Striker.

1 Q. And the other part is partially hidden over
 2 here, correct?
 3 A. Correct. Hidden under the metal.
 4 Q. And the fact that these two points are lined
 5 up is very good evidence that the door -- bolt -- fork
 6 bolts are all the way open?
 7 A. Forks are almost all the way open in these
 8 pictures.
 9 Q. Gonna give you 304-E. That was taken by
 0 Ms. Corrigan. Are you familiar with Ms. Corrigan's
 1 company that she works for?
 2 A. Exponent?
 3 Q. Exponent.
 4 A. Yes.
 5 Q. Pretty big outfit, isn't it?
 6 A. Pretty big, yes.
 7 Q. Again, a close up of that latch fully open,
 8 correct?
 9 A. I'd say almost fully open, given her last
 0 picture. I can't tell on the bottom. But it's close
 1 to fully open when she inspected it.
 2 Q. Let me show you 304-F. Another view into
 3 that latch opening, correct?
 4 A. Correct.
 5 Q. In this case we can see that the fork bolts

1 are in plane?
 2 A. They're not in plane. It's partially open,
 3 but not all the way open. But they're not in plane.
 4 Q. I'll show you 304-G. Is there anything
 5 different about this that would indicate that the
 6 latch is not fully open?
 7 A. Yes, the bottom one is showing there at the
 8 bottom. That should tuck in underneath the side
 9 metal.
 10 Q. Yeah?
 11 A. So it's almost fully open, I'll give you
 12 that. Because they move -- the experts move them from
 13 inspection to inspection. But it's still sticking up
 14 so it's, I'd say almost fully open, but not fully
 15 open.
 16 MR. EMBLEM: Let me have the Elmo.
 17 Q. (By Mr. Emblem) I'm gonna show you what's
 18 been admitted as 464-A-1. Your exemplar latch. I'm
 19 gonna display it on the Elmo. Do you recognize your
 20 latch? I've placed it on a little stack of paper here
 21 so it would sit up straight. Do you see that?
 22 A. Yes.
 23 Q. All right. And when you close the latch it
 24 looks like that, correct?
 25 A. Correct.

1 Q. And when you open the latch it looks like
 2 that, correct?
 3 A. Correct.
 4 Q. Okay. That's 464-A-1. Now, we can see the
 5 fork bolt up here, can't we?
 6 A. Correct.
 7 Q. And over here?
 8 A. Correct.
 9 Q. Okay.
 10 A. But they're both always tucking down below
 11 these edges. And in the Corrigan pictures it's still
 12 sticking up. In our pictures and Gilbert's pictures
 13 it's still sticking up. It moves from inspection to
 14 inspection by the experts.
 15 Q. This 464-A-1 that you brought with you today
 16 is another mini latch, just like the Clayton latch;
 17 isn't that true?
 18 A. That's correct.
 19 Q. So when these two pins line up here in the
 20 center, that's all the way open, those two pins line
 21 up in the center?
 22 A. Say that again.
 23 Q. Right here in the center, these two pins
 24 right here that we saw here in the Corrigan
 25 photographs?